

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

CRIMINAL DIVISION

IN RE: THE 2017 ALLEGHENY  
COUNTY INVESTIGATING  
GRAND JURY:  
CASE A

CP-02-MD-6182-2016

REPORT ONE

TO THE HONORABLE JILL E. RANGOS, SUPERVISING JUDGE:

We, the members of the 2017 Allegheny County Investigating Grand Jury, based upon facts received in the course of an investigation authorized by the Investigating Grand Jury Act, recommend administrative and policy action in the public interest. So finding, with not fewer than twelve concurring, we do hereby adopt this Report for submission to the Supervising Judge.

Foreperson, The 2017 Allegheny  
County Investigating Grand Jury

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## **INTRODUCTION**

This Grand Jury investigation arose, in great part, as a result of a letter of referral from the Pennsylvania Auditor General. In May of 2016, the Pennsylvania Auditor General, Eugene A. DePasquale, issued the results of a Performance Audit (“the Audit”) of the Penn Hills School District (“the District”) evaluating the application of best practices in regard to areas of finance, governance, safety, and contracts. Within the findings of that Audit Report were “significant noncompliance with best practices and certain relevant state laws, regulations, contracts, grant requirements and administrative procedures....” Performance Audit, Penn Hills School District, Allegheny County, Pennsylvania, May 2016, p 1.

The Audit Report also made findings regarding the financial situation at the District as it was when the Report was generated. The Audit found that the District’s outstanding long term debt grew from under \$11 million in 2009, to a whopping \$167 million in 2015. Further, the Audit found the balance of the General Fund<sup>1</sup> of the District decreased from a \$3.4 million positive balance in 2010 to an \$18.8 million deficit in 2015.

The Report further noted that the General Fund Budget for 2015 reflected a positive net balance only after the issuance of a general obligation bond in September of 2015. In other words, the District needed to take on additional financing in order to meet the expenses of day-to-day operations of the District. Prior to 2015, the District

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<sup>1</sup> A general fund consists of the unrestricted funds available for day to day operations of a school district.

had not raised taxes since 2009. Pursuant to the Taxpayer Relief Act,<sup>2</sup> the District is precluded from raising taxes more than .684 mills, obviously a limitation on the District's ability to raise revenues. Consequently, the District cannot independently raise the revenue necessary to meet its expenses.

The Auditor General, the Penn Hills School Board ("the Board"), the District's then Superintendent, and its former Business Manager to be deficient in their management and oversight, and the financial situation of the District to be precarious and alarming. As the Auditor General has no forensic auditors on staff, he sent a copy of the Audit to the Allegheny County District Attorney's Office, the United States Attorney's Office for the Western District of Pennsylvania, the Pennsylvania Department of Revenue, and the State Ethics Commission for further investigation. Thereafter, the Allegheny County District Attorney's Office commenced a more robust investigation that ultimately led to the investigation that has been pursued by this Grand Jury.

Following receipt of the referral from the Auditor General, Detectives from the Allegheny County District Attorney's Investigative Unit ("DAI Detectives") commenced an investigation. That investigation continued until it became apparent that the resources of a Grand Jury would be necessary in order to adequately carry out the inquiry. Legal Advisors to this Grand Jury filed a Notice of Submission stating that the unique investigative tools inherent in a Grand Jury were needed to pursue an investigation into the financial circumstances underlying the construction of two school buildings in the District. These tools included the power to compel the attendance of witnesses and to obtain testimony from such witnesses under oath, the power to obtain

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<sup>2</sup> The Taxpayer Relief Act of special session Act 1 of 2006 signed on June 27, 2006 and modified in June 2011 by Act 25 of 2011.

testimony from witnesses who assert 5<sup>th</sup> Amendment rights through grants of immunity where warranted, the power to pursue before the Court both civil and criminal contempt proceedings when necessary, as well as all other resources of the Grand Jury required to adequately investigate these matters. The Notice of Submission was reviewed and approved by the Supervising Judge of the Grand Jury on December 16, 2016.

Since that time, numerous witnesses have testified before this Grand Jury and a multitude of subpoenas securing literally tens of thousands of documents have been served upon numerous persons, businesses, and governmental entities. Additionally, experts in the fields of bonds, accounting and securities, as well as special advisors to the District Attorney's Office, have been consulted to aid in the analysis of the documentary evidence presented to this Grand Jury. Ultimately, this Grand Jury is unable to recommend the filing of criminal charges by way of a Presentment in this case. Nevertheless, our investigation has uncovered questionable practices in connection with the construction of two public schools by the District that led to the egregious, excessive expenditure of public resources, placed the District in financial distress and jeopardized the education of its students. This Report addresses our findings, conclusions, and recommendations.

## SUMMARY

As described in detail within this Report, the Penn Hills School District is currently in a catastrophic financial position from which it will be unable to recover without outside intervention. The dire financial condition is the result of years of poor leadership, inept decisions made to promote personal interests and ineffective oversight by those entrusted to serve the interests of the students and taxpayers of Penn Hills.

The most egregious example of the abuse of public trust was in the decisions made surrounding the building of two new schools in the District. The Board, various District employees in leadership positions and third-party vendors contracted to consult on the building of new schools for the District, engaged in actions and participated in decision making that showed, at best, an utter lack of understanding of the future costs and obligations that would result from their actions. Their poor stewardship has left the District on the verge of a financial calamity that will continue to cast a shadow over the financial affairs of the District for literally decades to come. The acts which caused this financial catastrophe, while most likely the result of a total lack of an understanding or sophistication regarding the intricacies of multi-million dollar financial transactions, had an impact upon the Penn Hills community which has been disastrous.

As of the issuance of this Report, the District has reached indebtedness in excess of \$171 million, which is approaching the District's statutory borrowing base limit, and the District is unable to raise taxes beyond the yearly inflation index without the approval of the Commonwealth. Concurrently, the District's State subsidy has been reduced because the Commonwealth is paying millions of dollars of debt service to the District's bondholders directly from the subsidy funds. While preventing the District from

defaulting on its bonds, this debt service is reducing the monies available to the District to pay its other obligations. Based on its current financial condition, the District will be unable to pay its bills, including payroll, well before the 2018-2019 school year is over. Once the District cannot meet its day-to-day obligations, without further intervention, the quality of education provided to its students will be negatively impacted to a degree that the District may be in violation of its Constitutional mandate to provide an education.

As detailed in the findings and analysis below, several individuals and entities contributed to the current catastrophic financial condition of the District. The 2009 Board, consisting of Erin Vecchio (President), Donald Kuhn, Jr., Margie Krogh, Cathy Mowry, Barry Patterson, John Zacchia, Carolyn Faggioli and Robert Hudak, voted unanimously to incur debt up to \$140 million to build new school buildings. This vote set the District on its path to financial destruction as the District was not financially capable of repaying this debt. In fact, the District had been operating at a deficit for several years prior and was experiencing a decline in enrollment. This Board compounded the effects of this decision by recklessly spending on extravagant designs and fixtures for these buildings while ignoring recommendations for cost saving measures.

The Board further hired an architectural firm with extremely limited experience in the construction of new schools, Architectural Innovations ("AI"). The hiring of Jan Brimmeier, the principal of AI, has the appearance of a politically motivated decision. Board President Erin Vecchio had previously worked for her brother, then Turnpike Commissioner, Joe Brimmeier. As described below, Joe Brimmeier also acted as a reference and was otherwise involved in Vecchio getting a job within the Pennsylvania



Department of Revenue. Additionally, Don Kuhn, Jr. obtained employment with the Commonwealth during the time that these construction decisions were made.

Jan Brimmeier/AI designed and built two schools that were over budget, over built and overly extravagant. Several design and material options increased the cost while adding no educational value to the function of the buildings. This served only to create showpiece and increase the fee paid to AI, as the contract awarded a fee based on a percentage of the total cost of the Project. Jan Brimmeier/AI was paid \$11 million to build the schools.

The overspending by Jan Brimmeier, as approved by the Board, caused the District to borrow approximately \$27 million in additional funds in 2012. The District had no additional means to pay for this debt.

Although these Projects were meant to be overseen by the Pennsylvania Department of Education to ensure that taxpayer money was not used to build a "Taj Mahal," our investigation revealed that any such oversight was wholly ineffective. Although the current statutes and regulations governing these types of capital projects set forth requirements that must be followed, there is no consequence for any failure to comply. Additionally, the oversight is limited to only certain aspects construction and not the actual spending of a district. Further, there is no consideration of a district's financial condition or ability to afford a project. Without, meaningful oversight, the wasteful spending of taxpayer money, such as that of the Board and AI, goes unchecked.

The District independent auditor, Herbein+Company, Inc, made an accounting error which overstated the District's General Fund by \$11 million from 2010-2012. As a

result, the audited financial statements gave the impression that the District had more money to spend on its day to day operations than were actually available for those purposes. This error was not corrected until 2013.

As will be demonstrated in the findings below, the poor decision making by the Board and the District, which went unchecked, has caused the current administration to face the possibility that it will be unable to provide a quality education in a safe environment.

### **FACTUAL FINDINGS**

#### **I. CONDITION OF THE DISTRICT PRIOR TO CONSTRUCTION**

This Grand Jury learned that the financial troubles of the District began well over a decade ago. Dating back to Fiscal Year (FY)<sup>3</sup> 2005 and continuing through the present, the District has operated at significant losses. The District attempted to address these losses by issuing municipal bonds in the Fiscal Years of 2005, 2007 and 2008. Despite the issuance of these bonds, the District's financial troubles persisted. Losses continued to be incurred up to and including the FY 2009. The losses ranged between \$1.7 million and \$7.5 million per year between FY 2005 and FY 2009. Below is a chart which outlines the operating losses of the District from FY 2005 through FY 2009:

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<sup>3</sup> The Fiscal Year for the Penn Hills School District runs from July 1 to June 30.



As early as 2006, the District began reviewing the utilization of the District's buildings, due to the condition of the buildings and a decline in student enrollment. At that time the District's long-time architect, Phillip Foreman of Foreman Group Architects, conducted a Capital Assessment Study of the District. The results of the study were presented to the Board on April 20, 2006. Foreman discussed with the Board the decline in enrollment and the decrease in revenue for the District. At that time, Foreman recommended converting one of the existing elementary school buildings into a maintenance facility. This change would have resulted in savings by closing the existing maintenance facility and reducing the number of elementary schools. Foreman did not recommend building new schools as he did not believe it was feasible for the District at that time.

In September of 2007, the District was in a dire financial condition. Specifically, the District had a deficit of \$400,000 and was no longer able to pay its bills. The Superintendent at that time contacted the Pennsylvania Department of Education (PDE)

to request help. PDE appointed an independent financial consultant to assist the District in reviewing its financial condition and to make recommendations to improve its financial standing. The consulting firm Educational Management Group ("EMG"), headed by Dr. Donald Boyer, examined the District's finances and recommended several means by which spending and expenses could be cut to save money.

After an extensive review of the District, Dr. Boyer authored a Management Assessment Study commissioned by PDE. On January 8, 2008, Dr. Boyer presented the findings of that study to the Board. In this presentation, Dr. Boyer identified several factors affecting the District's poor financial condition.

One of the biggest contributing factors was the decrease in enrollment in the Penn Hills Schools. Dr. Boyer noted that, although the student population had consistently declined, the District had not reduced certified staff. Dr. Boyer also found that the costs related to staff in the District were higher than the average for other school districts. The District was spending 87.16 percent of its total budget on staff related costs. Therefore, Dr. Boyer recommended steps which could be taken to control the personnel costs. Among his recommendations was furloughing teachers and other certified staff. However, to legally furlough the staff as recommended, the District had to establish that it met one of three conditions: an alteration of the educational program, a substantial decline in enrollment or the consolidation of schools.

The first condition that would allow the District to furlough staff is the alteration of the educational program. To meet this condition, the District would need to petition PDE for approval to return to an educational program consisting of one teacher for all subjects in the elementary schools, rather than having specialized teachers for certain

subjects. In other words, the educational program would eliminate any specialized teachers, such as music teachers or art teachers, and rely on one teacher to teach all subjects to the class.

The second condition the District could establish was a substantial decline in enrollment. While the District could certainly establish that its enrollment had declined, Dr. Boyer opined there may be difficulties in pursuing furloughs based on this factor. Specifically, Dr. Boyer indicated that the term “substantially” had never been defined, leading to many challenges to furloughs based on declining enrollment.

The third condition which would allow the District to furlough staff was the consolidation of schools. It was Dr. Boyer’s recommendation that the District furlough staff based on the consolidation of schools as this alternative would be the easiest to establish based on an initial review of the buildings in the District. This alternative could be supported by addressing the alignment and use of the buildings. Dr. Boyer made several recommendations in this regard.

The first recommendation was to realign the schools so that the elementary schools would house kindergarten through fourth grade, the middle school would house fifth through eighth grade and the high school would house ninth through twelfth grade. At the time of the EMG report, the elementary schools were kindergarten through fifth grade, the middle school was sixth through ninth, and the high school was tenth through twelfth. This realignment would allow the District to address teaching certification issues. Specifically, the ninth grade teachers were often certified as high school teachers only and, therefore, could not teach the seventh and eighth graders although they were in the same building, thus resulting in the hiring of additional teachers.

Dr. Boyer also recommended that the District take measures to renovate or replace the existing buildings. Due to the age and condition of the buildings, major renovations were needed to bring them up to code. One recommendation included a plan to temporarily repurpose two elementary schools and renovate the high school. The repurposed elementary school buildings could be used to educate the high school students during the renovation projects.

Dr. Boyer also recommended the District review their collective bargaining agreements for other opportunities to save money and to ensure that any actions taken by the Board to furlough staff did not violate those agreements.

EMG's study also showed as of July of 2007, the District owed approximately \$8 million, but only had approximately \$4.7 million in cash and investments. Additionally, the ratio between the District's assets and their liabilities had steadily decreased. By 2007, the District's assets amounted to only 27 percent of what it owed.

Dr. Boyer found the budgeting practices of the District also contributed to its financial condition. First, a large portion of the District's revenues came in the form of state and federal subsidies. The amounts provided by the government changed from year to year. Therefore, when budgeting, the Board was forced to estimate the amount of revenues based on the prior year's subsidies. Additionally, Dr. Boyer found that the Board would reduce costs on the paper budget without actually reducing the spending. Additionally, the District failed to account for several expected increases in expenditures.

Following Dr. Boyer's presentation, the District hired EMG to do a building utilization study. EMG presented a preliminary report to the Board on May 6, 2008 and

issued a final Building Utilization Report regarding the District's buildings on August 8, 2008. The report estimated that the current high school was 218,000 square feet. Dr. Boyer recommended the size of the high school be reduced to 208,029 based on the decline in enrollment. Dr. Boyer estimated the cost of renovation to be between \$28 million and \$35 million.

During this time, the Board also began discussing the possibility of building a new High School and one centralized Elementary School. In late spring or early summer of 2008, the Board formed a Long Term Planning Committee to discuss the future long-term building reconfiguration of the District. This Committee was comprised of members of the community, administrators from the District and those involved in the construction process. Several of those involved believed the decision to build new schools was a foregone conclusion.

Although both Foreman and Dr. Boyer had recommended renovations to the existing buildings, the Board ultimately decided to build the new schools. Dr. Boyer continued to advise the Board and provided his support and assistance in various aspects of the construction projects.

## II. THE CONSTRUCTION PROJECTS AND FINANCING

In June of 2008, the District sent requests for proposals for architectural services and construction management. By July 25, 2008, the District had received proposals from several architectural firms. Among those who submitted proposals was Architectural Innovations ("AI"), an architectural firm owned by Jan Brimmeier.

The District began comparing the architectural firms that had submitted proposals. A chart created by the District showed that AI had, by far, the least amount of experience in new school construction. However, Jan Brimmeier had many strong political connections in Penn Hills. Jan's sister was the solicitor for the municipality of Penn Hills. Jan's brother, Joe Brimmeier, was the Turnpike Commissioner. Then School Board President Erin Vecchio, had previously worked for the Turnpike Commission and Joe Brimmeier. Vecchio was injured on the job while working for the Turnpike and began receiving workers' compensation payments. As those benefits ran out, Vecchio needed to find a new job. Joe Brimmeier told Vecchio to apply with the Pennsylvania Department of Revenue as there was an opening. Vecchio then applied for a managerial position in the Department of Revenue, listing Joe Brimmeier as a reference. It was reported that Joe Brimmeier was "pushing hard" for Vecchio to get the job. In January of 2006, the Department of Revenue contacted the Bureau of State Employment seeking to have Vecchio referred as she was the "preferred candidate." In fact she was the only employee interviewed for the position. In 2006, Vecchio was offered the position in the Department of Revenue at a salary commensurate with what she was paid while working for the Turnpike. She initially rejected the job offer, telling the Department she had expected more money. Vecchio also testified that she informed Joe Brimmeier of her desired salary and he was able to accommodate her. She was then offered the same job at four steps, or pay grades, above the minimum.

Vecchio admitted to the Grand Jury that Joe Brimmeier called her regarding the open architectural position for the construction projects. According to Vecchio, Joe Brimmeier stated that jobs would be available for the Penn Hills area if Jan Brimmeier



was awarded the position.<sup>4</sup> However, Vecchio maintained that she merely advised Joe Brimmeier regarding the interview process for the architectural position. Vecchio further denied that her vote to hire AI was affected by Joe Brimmeier's offer. Rather she stated that, in her opinion, AI had put on the best presentation of those interviewed.

Board Member Donald Kuhn, Jr. was able to obtain employment with the Pennsylvania Lottery Commission. Kuhn's personnel record with the Commonwealth of Pennsylvania showed that he submitted a resume to the PA Lottery Commission in February of 2009. Further, the "Personnel Data Summary" document in his file is dated February 16, 2009, one day before the Board voted to build the new High School. Kuhn was hired by the Commission on March 9, 2009. Kuhn also denied that his employment by the Commonwealth affected his vote to hire AI.

Board member Carolyn Faggioli testified before this Grand Jury that she and several other Board members received phone calls from Vecchio and Kuhn telling them to vote for AI to be the architect for the construction projects. Further, Rick Liberto, District Business Manager, testified that he heard Vecchio say at a Board meeting that she knew some people received phone calls and they had better listen. However, other Board members who testified denied that these calls were made. All the Board members denied that they hired AI for political reasons.

On Saturday, August 16, 2008, the Board scheduled a special meeting to hear presentations from five architectural firms, including AI. Members of the administration were also in attendance. This meeting was not open to the public. Three days later, on

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<sup>4</sup> As the result of a separate Statewide Grand Jury investigation, Joe Brimmeier pled guilty to conflict of interest charges on October 20, 2014. Although we, through our advisors, made attempts to review the materials related to the Statewide Grand Jury investigation, we were not given access to review any of the Grand Jury materials to determine if Joe Brimmeier's conduct as described herein was part of that investigation and any subsequent plea agreement.

August 19, 2008, a public meeting of the Board was held. At this meeting the Board voted to terminate their long-time architects, the Foreman Group. The Board also voted to hire AI to complete a feasibility study and hired Turner Construction ("Turner") to be the construction manager for the High School and Elementary School projects. Board members Margie Krogh, Donald Kuhn, Cathy Mowry, Barry Patterson, Erin Vecchio, John Zacchia, Joseph Bailey, Carolyn Faggioli and Robert Hudak all voted in the affirmative on all three resolutions and the resolutions passed unanimously.

Over the course of the next few months, AI began working on a feasibility study, a preliminary study to determine the viability of the projects, to identify other feasible options and to assist in the future planning of the project. AI presented multiple options for renovating or replacing the buildings. The focus became replacing the High School, which would now house grades nine through twelve, and building a new consolidated Elementary School. AI's presentation included building a larger High School than the existing school, rather than reducing the size as Dr. Boyer had previously recommended.

AI also gathered information regarding the potential for savings from consolidating the Elementary schools. By consolidating the schools, the District would be able to save money on staffing and services otherwise needed to maintain separate buildings. Additionally, the District could eliminate duplicate teaching positions that were needed to provide a proper education in the separate buildings. In January 2009, AI reported consolidation savings of between \$8 million and \$10 million per year, with the caveat that the "operating cost savings shown were based on information received from the School District." The bulk of the savings would come from the consolidation of

the six elementary school buildings into one building. In contrast, Liberto, the District's business manager, estimated the consolidation savings to be \$4.2 million per year.

Meanwhile, the District began working with its long-time bond professionals to explore the financing possibilities for construction. The District used the same bond professionals that they had used for several years and who had recently worked on bonds issued in 2005, 2007 and 2008.

The bond professionals provided information on the financing possibilities, advising that the District could issue non-taxable municipal bonds. Through the issuance of municipal bonds, the District would be obligated to pay an annual debt service based on the amount of the bond.

Additionally, on February 16, 2009, Federal Build America Bonds (BAB) legislation was enacted in an effort to stimulate the nation's economy. This legislation created a source of financing whereby municipal governments could issue taxable bonds, however, the Federal government would reimburse the municipality up to 35% of the amount of the annual bond interest. The reimbursement put the taxable BAB on parity with the tax-exempt municipal bond. The BAB provided a compelling financing option wherein the Federal government would reimburse approximately one-third of the interest costs of financing for the construction of the schools. However, the risk in using BABs was that the Federal government could change or eliminate the annual interest reimbursement at any time.

When obtaining financing to build the school projects, the District also had to consider its statutorily defined limit on how much debt the District could incur. Pursuant to the Pennsylvania Local Government Unit Debt Act, governmental entities are limited

in how much they can borrow. For school districts, this limit is calculated by averaging the revenues of a district over the past three years and multiplying that number by 2.25. Any debt that exceeds the limit must be approved by the public through a referendum. The calculation does not take into consideration a school district's expenditures or ability to pay the debt.

Another factor to consider in the financing of the construction was the potential reimbursement of construction costs by the Commonwealth. Through PDE's Planning and Construction process ("PlanCon"), the Commonwealth will reimburse a school district for certain construction expenses. The amount of reimbursement is calculated using a strict formula. The formula is based largely on the usable space of the building. According to PDE: "When a school district undertakes a major school construction project and seeks reimbursement from the Commonwealth, a process known as PlanCon is initiated. PlanCon, an acronym for Planning and Construction Workbook, is a set of forms and procedures used to apply for Commonwealth reimbursement. The forms are designed to: (1) document a local school district's planning process; (2) provide justification for a project to the public; (3) ascertain compliance with state laws, regulations and standards; and (4) establish the level of state participation in the cost of the project." A district applying for reimbursement is provided the required forms, referred to as PlanCon A through PlanCon J, and instructions on how to complete them. Typically, it falls on a district's business manager and the architect to complete the forms and obtain reimbursements. The Division of School Facilities ("The Division") within PDE reviews proposed school building projects, including their plans and specifications, enrollments, building utilization and building condition. The Division also

calculates the reimbursement rate for qualified school construction projects and reviews. The rates of reimbursement to a district for a project can change over time due to the refinancing of the district's bonds.

Based on AI's feasibility study, including the estimated consolidation savings and potential reimbursement, the Board believed it could build the new schools with little to no local contribution. The estimates presented to the Board early in the process indicated the amount of savings would cover the financing costs and the reimbursements would cover a significant portion of the construction costs.

In January of 2009, the District's bond underwriters, H-T Capital, outlined options for issuing bonds at several levels of financing, ranging from \$89.5 million to \$127 million. The underwriters used a wrap-around structure, which accounted for the District's existing debt. This structure also outlined the estimated annual debt service of the bonds based on the amount of bond issue. Specifically, the estimated annual debt service for a bond issuance in the amount of \$126.5 million was \$5.27 million.

On February 17, 2009, at a public meeting, the Board approved a resolution to award AI the contract to design the new High School. AI was approved to prepare documents for the construction of a new High School with an estimated square footage of 239,400, which was not only larger than Dr. Boyer had recommended, but also greater than the existing high school. Margie Krogh, Donald Kuhn, Cathy Mowry, Barry Patterson, Erin Vecchio, John Zacchia, Joseph Bailey, Carolyn Faggioli and Robert Hudak were all present and voted in the affirmative, passing the resolution unanimously.

Following this resolution, AI continued to develop plans for the High School and began developing more detailed plans for the Elementary School Project. These plans

continued to include larger buildings. Throughout this time, Turner was continually advising AI that the estimated costs for AI's plans were over-budget and that costs needed to be cut. Turner made several recommendations to eliminate high end finishes and use lower costs materials to get the Projects within the budget. Despite Turner's cost estimates and suggestions for savings, AI would generally continue with the plans as designed, insisting that Turner's numbers were inflated.

On April 20, 2009, the District awarded a contract to have AI demolish the administration building and build a new High School on site as well as to renovate the Middle School to include the administrative offices. The overall budget for the entire project was \$74,923,807.28. The cost of construction for the High School was listed as \$58,534,224.44 for 253,875 square feet. AI was to complete the project in 40 months, or by September of 2012.

After the contract for the High School project was awarded, AI and the District had to finalize the plans for the Elementary School. AI continued to develop plans for the projects and to present options to the District. On June 25, 2009, the Board held a public voting meeting. At this meeting, the Board approved a resolution allowing the District to enter into an agreement for AI to design and develop a new Elementary School. AI was to be paid 5.8 percent of the construction costs and the estimated square footage was 195,000. At this meeting, the Vice President of the School Board referenced \$8 million annually in savings the District was going to see from the consolidation of schools. It was also at this meeting that the issue of a potential referendum on the project was brought to the attention of the Board. The resolution passed by a five to three vote, Hudak, Krogh, Patterson, Zacchia and Bailey voted in

the affirmative while Faggioli, Mowry and Vecchio voted in the negative and Kuhn was listed as absent.

Meanwhile, the District and the bond professionals were working out the details of the financing. It was determined the District would need to issue about \$130 million in bonds to cover its construction costs. H-T Capital provided the District with an amortization schedule of a potential issuance of \$130 million in bonds. After fees were paid, the District would be left with approximately \$125 million to build the projects. The annual debt service would be approximately \$5.2 million. Based on these numbers, Turner created a cost analysis dated August 27, 2009, of a project totaling \$130 million. Turner determined that approximately \$90 million would be spent on the High School, \$38 million would be spent on the Elementary School and \$2 million would be spent on the administrative offices. Turner specifically noted that these costs must be maintained for the entire project to work. It was also noted that conceptual estimates were still being developed to determine if the Elementary School project would be new construction or renovations.

Throughout this process, Turner would continue to provide estimated cost analyses based on the designs provided by AI. As the project developed, Turner would update the projected costs. At every phase, the total project costs estimated by Turner amounted to more than \$130 million. Despite Turner voicing their concerns regarding the overages, AI continued to increase the total square footage of the buildings and continued to include high end elements in the designs.

On September 1, 2009, the Board heard presentations from representatives of municipal bond brokers: H-T Capital and PNC Bank. The Board was told at this

meeting that the annual debt service would be \$5.2 million. The H-T Capital representative informed the Board that proceeds from the bond issue would cover the construction costs as well as debt service for the first three years, then, after the buildings were completed, the consolidation savings would pay for the debt service. The Board was also informed at this meeting that Liberto's projected savings amounted to only \$4.2 million, which was \$1.0 million less than the debt service.<sup>5</sup>

On September 14, 2009, the Board adopted a resolution approving a debt ordinance. The ordinance allowed the District to incur non-electoral debt through the issuance of a general obligation bond not to exceed \$140,605,000 in order to: (a) refinance certain 2004 Bonds; (b) fund capital projects including: (i) demolition and site preparation, (ii) the construction and equipping of a new senior High School and related facilities, (iii) the construction and equipping of a new Elementary Center and related facilities, (iv) relocation of the administrative offices, and (v) other various and sundry capital improvements throughout the school district; and (c) paying the costs of issuance of the Bonds. It was determined by the Board and the bond professionals that the bonds would be issued before the final project costs were determined due to favorable interest rates available at the time. The interest rates were a mere .5 percent above the all-time low. The resolution authorizing the issuance of the bonds to fund the projects passed unanimously with Margie Krogh, Donald Kuhn, Cathy Mowry, Barry

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<sup>5</sup> Liberto testified before this Grand Jury that there was an annual debt service in the pre-existing budget of approximately \$1 million and that this payment was included in the estimated \$5.2 million debt service. Therefore, he understood that the money already budgeted for debt service plus his estimated consolidation savings would enable the District to make the new debt service payment. In contrast, the graphs and statements of the bond brokers presented at the Board meeting on September 1, 2009 attended by Liberto indicated that the debt service on the total existing debt was about \$2.6 million and the debt for the projects would increase the debt service by about \$5.2 million, for an annual total projected debt service of almost \$8 million starting in 2011.



Patterson, Erin Vecchio, John Zacchia, Joseph Bailey, Carolyn Faggioli, and Robert Hudak all voting in the affirmative.

On September 14, 2009, the Board also held a vote to approve the submission of PlanCon A and PlanCon B to build the new Elementary School Project. At this meeting, concerns were raised regarding the need for the Elementary School Project. Liberto informed the Board that the Elementary School Project would provide the bulk of the savings which were needed to complete the High School Project based on the combined consolidation savings. He further stated that maintaining the current elementary school buildings was costly because of their dilapidated conditions. The resolution to submit the PlanCon paperwork passed by a five to three vote, Hudak, Krogh, Patterson, Zacchia and Bailey voted in the affirmative while Faggioli, Mowry and Vecchio voted in the negative and Kuhn abstained from the vote.

On a certificate dated September 18, 2009, AI indicated the total cost of both projects was \$135 million. This certificate is an estimate from the architect used by bond counsel to obtain the tax certificate used to support the debt for the District.

On September 25, 2009, the Board awarded the contract to build the Elementary School to AI. The contract for the Elementary School Project estimated the square footage of the Elementary School to be 185,975.

On October 21, 2009, Turner Construction sent a letter to Liberto indicating the estimated costs of the projects exceeded the \$130 million budget by about \$10 million. Specifically, Turner had concerns about the value engineering savings estimated. Turner also noted that the square footage of the buildings had continually increased. Finally, the letter noted the estimated cost of the new Elementary School was \$5 million

over budget. Liberto shared this letter with the Board and had many “heated” discussions with Jan Brimmeier about the project being over budget.

On October 26, 2009, the 2009 Bonds closed in the total face amount of \$134,755,000, which total was comprised of the following: (i) \$24.98 million tax exempt Series A bonds (“2009 A Bonds”); (ii) \$104.76 million taxable Series B, Build America (BAB) bonds (“2009 B Bonds”); and (iii) \$5.015 million tax exempt Series C bonds, which were used to refund the District’s bonds from 2004. The 2009 A Bonds and 2009 B Bonds were designated for the construction projects, totaled \$129.74 million, and, after bond expenses such as discounts, insurance premiums, and issuance expenses, resulted in a deposit to the construction fund of \$125.4 million.

The \$125.4 million deposited to the construction fund (“Construction Fund”) was all the money that that the District would have to build the Projects as well as pay the interest on the 2009 A and 2009 B Bonds during the construction period. Any expenditure in excess of this amount would have to be funded out of the District’s general fund or another source.

The 2009 Bonds were insured by a private bond insurance company for a substantial premium in excess of \$1 million. This premium allowed the District to obtain a better credit rating resulting in a lower interest rate for the 2009 Bonds.

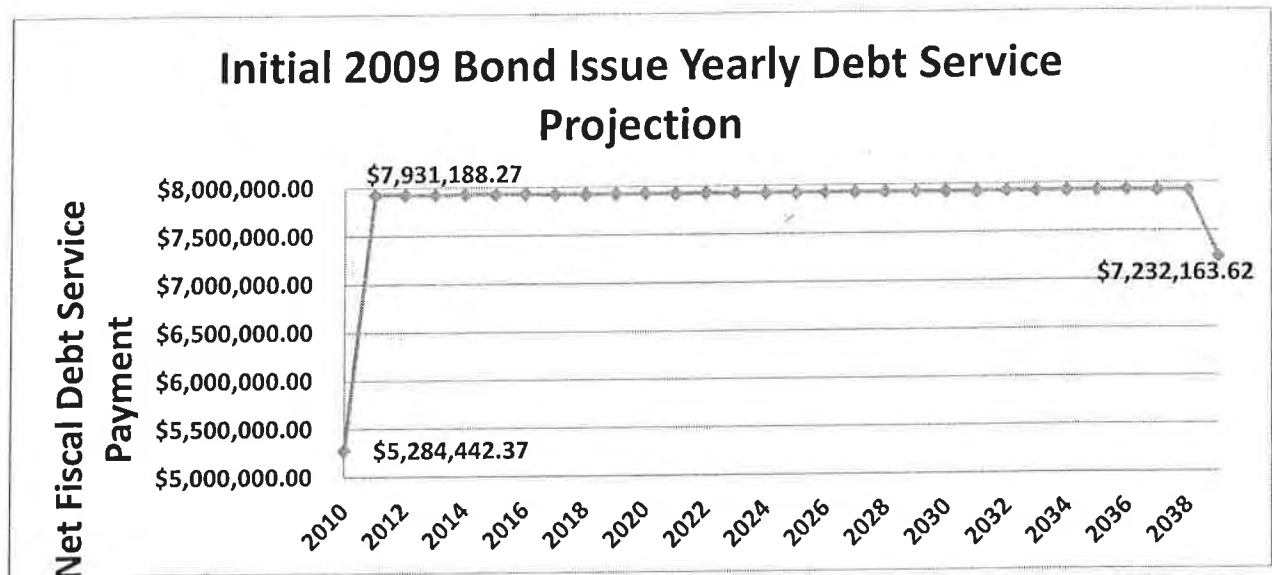
The District’s credit rating for the 2009 Bonds was also enhanced by Section 633 of the Pennsylvania Public School Code, as amended by Act 150 of 1975 (“Section 633”), sometimes referred to as the “Intercept Program.” Section 633 provides that, in the event the District failed to pay a debt service obligation when due, PDE would withhold or intercept an amount equal to the debt service payment from the

Commonwealth appropriation due the District and pay the bondholders. Thus, although Section 633 provides a benefit to a district at the time they issue bonds in the form of a better rating and interest rate, if a district defaults on their payments, that district will receive less money from the Commonwealth subsidy to spend on their other obligations. Effectively, the Commonwealth has prioritized the payment of the debt service over the other obligations of the district, including the expenditures made to benefit the education of the students.

When the Bonds were issued in 2009, they included an Official Statement (O/S) in which the District provided information about its financial condition. A reference to Section 633 was specifically included in the O/S. The O/S also showed that the District had been operating at a deficit for the last several years.

At the time of the issuance of the 2009 Bonds, the District was already paying debt service of approximately \$2.6 million annually on the pre-existing bonds ("Old Bonds"). The concept of wraparound debt meant that the annual debt service for the new 2009 A and B Bonds for the Projects would amount to another \$5.28 million, thereby increasing the annual debt service on all the District's Bonds to about \$7.9 million. In 2017, when the Old Bonds were to be fully paid off, the Old Bonds annual debt service payment of \$2.6 million would be redirected to the 2009 A and B Bonds, thereby increasing the annual debt service payment on the 2009 A and B Bonds from \$5.28 million to \$7.9 million. In essence, once the 2009 Bonds were issued on October 26, 2009, the District's annual debt service payment increased to \$7.9 million and would stay there until the 2009 A and B Bonds were repaid. Below is a chart showing the

scheduled total debt service to be paid by the District throughout the life of the 2009 A and B Bonds, prior to any refinancing:



### III. ACT 34 HEARINGS

Pursuant to Act 34 of 1973 ("Act 34"), also referred to as the Taj Mahal Act, a public hearing must be held on all new construction and substantial additions for second, third and fourth class school districts, which includes Penn Hills. An addition is considered substantial if it increases the size of the building by 20 percent. The hearing requirement applies to all new construction projects undertaken by a qualifying school district.

The purpose of the Act 34 hearing is to keep school structure costs in check, to provide transparency by notifying the public of the construction, and, where the construction costs exceed a certain amount, to obtain the public's consent through a referendum. The public hearing must be conducted regardless of whether the school district is seeking reimbursement through the PlanCon process. A separate hearing is

needed for each building as each building is considered a separate construction project under Act 34. However, the only penalty imposed for the failure to hold an Act 34 public hearing is the withholding of reimbursement funds. Therefore, if a school district is not seeking PlanCon reimbursement and fails to have a public hearing, no consequence is suffered by that district.

Act 34 applies for the life of the project. Per statute, if specified costs stated in the bids exceed the estimated costs by eight percent, then a second public hearing is required. However, a school district also has the option to reduce the costs to avoid a second hearing. Additionally, a referendum is required if certain costs exceed a project building's calculated referendum limit. These calculations are based on floor plan design, room schedule capacity and per pupil cost limits rather than the total costs of a project. Again, a district that is over this limit is given an opportunity to amend the plans to reduce the applicable costs to avoid a referendum.

Lastly, PDE establishes a Local Share Limit. This limit calculates the equivalent millage of the estimated local share. If the equivalent millage exceeds the Local Share Limit, then an exception must be approved by PDE. An exception is granted if the district provides an acceptable explanation of how the local share will be funded. If an exception is not granted, then PDE will withhold reimbursement. PDE does not review the financing of a project, but rather leaves that to the district to determine. Further, PDE does not verify that a district follows through with any of the assurances of available local funding offered by a district to obtain an exception.

The District held an Act 34 hearing regarding the construction of the High School on October 27, 2009, one day after closing on the 2009 Bonds. However, in its review

of the hearing, PDE determined that the District did not properly advertise the hearing to the public and required the district to have a second hearing. On March 30, 2010, a second public hearing was conducted and the same information was provided to the public. The booklet provided at both hearings informed the public that the maximum project cost for the High School was to be \$97,873,787, consisting in part of a maximum building cost of \$70,509,000 and \$10.6 million to pay debt service ("capitalized interest") during the construction period. The square footage of the High School was now 277,000, up from the original 239,000 square foot design despite continued declining enrollment.

The total cost of the building projects that was relayed to the public was \$130 million, with a local share amounting to \$115 million. Dr. Boyer attended the hearing in support of the District's decision to build the schools. During his presentation, he indicated that the project would increase the District's current debt service by \$4.1 million annually. He further informed the public that the estimated cost savings from consolidation was \$4.2 million, which would cover the increase in debt service. However, the consolidation savings from the High School Project was shown to be only \$980,000. Based on these numbers, the Elementary School would have to generate \$3.2 million in savings for the District to realize the total estimated consolidation savings. The public was also told that both schools would be completed by August of 2012. Not one member of the public raised a question or an objection to the Projects.

The new High School was to hold grades nine through twelve and its capacity as reported at the Act 34 hearings was 2,901 students. This information was also reported to PDE on PlanCon D. In contrast, Appendix A of the 2009 O/S showed the projected

enrollment for FY 2012 for grades seven through twelve was expected to be 2,423, which despite including two additional grades, was less than the capacity of the proposed High School. The District was also then experiencing rapidly declining enrollment due mainly to the exodus of students to charter schools. During the planning stages of the projects, the Board continually expressed their belief that if the new schools were built, students would return to the District.

A separate Act 34 hearing was held on March 14, 2011, for the Elementary School Project. By this time, construction of the High School was underway. The booklet provided to the public showed yet another increase in the size of the schools. The High School was now listed at 303,000 square feet while the Elementary School was to be 194,000 square feet. These plans far exceeded the square footages detailed in the contracts, yet the total cost estimate for the projects remained at \$130 million. Again, no objections or questions were raised by the public. At this hearing, the District indicated the new Elementary School would save the District \$2.4 million annually in consolidation costs. Accordingly, when the Elementary School savings of \$2.4 million are added to the \$980,000 in consolidation savings presented in the High School Act 34 hearings, the total consolidated saving had now been reduced to \$3.4 million. The estimated savings at this point was \$800,000 less than Liberto's consolidated savings estimate of \$4.2 million in 2009. With increased annual debt service of at least \$5.2 million and savings of only \$3.4 million, there would be an annual shortfall of at least \$1.8 million when the projects were completed.

#### IV. THE CONSTRUCTION PROJECT WAS OVERBUDGET

The District's construction project was over-budget from the very beginning. As described above, Turner continually tried to inform the District of this fact throughout the process. On December 22, 2010, Turner submitted a Design Development Document Estimate for the Elementary School. This estimate showed a total cost for the Elementary School to be over \$46 million. This amount was \$8 million more than what Turner had submitted to support the \$130 million budget prior to the 2009 Bond issue. Turner reported that AI was working based on a \$140 million budget while Turner was using a \$130 million budget. By January 5, 2011, Turner was estimating the total cost of the projects to be more than \$140 million, placing the projects at \$10.2 million over budget.

Based on Turner's estimates, Liberto and the new Superintendent addressed the overages with AI. Specifically, they sent a letter to AI requesting a meeting and asking AI to reduce the cost of the project by \$9-\$10 million, through value engineering options. As a result of meetings held in January of 2011, it was determined that \$8.4 million of capitalized interest and the \$5.9 million of costs budgeted for equipment, furniture and fixtures would be taken out of Turner's construction budget. Liberto indicated that he would attempt to find another source of funding for these items from the District's budget rather than taking those monies from the Construction Fund. The total estimated cost of these items was \$14.3 million. On top of this amount, it now appeared that the Elementary School Project, which was to provide the bulk of the consolidation savings, would not be completed until 2014, adding more years of debt service without any offsetting savings. Throughout January and February, 2011, Liberto and Turner



worked to get the projects within budget. However, the need to remove \$14.3 million from the construction budget meant that the District would need additional funds to complete the projects.

All of these budget discussions and adjustments occurred before the Act 34 Hearing on the Elementary School Project on March, 14, 2011. However, the public was not informed of the budgetary issues or the additional costs the District agreed to incur in the attempt to keep the projects in budget.

Despite the efforts of Turner, the costs of the projects continued to exceed the budget. By August 18, 2011, Turner was telling AI that it needed to reduce the High School project by \$17 million. AI refused, indicating that the size of the building would have to be reduced by one-third to attain that goal.

On August 25, 2011, the Elementary School construction costs had gone so far over budget that PDE told the District it was over the referendum trigger by \$1.5 million. Through the PlanCon process, the District was required to submit a PlanCon D form. The initial PlanCon D form listed the maximum cost of the Elementary School as \$43,041,730. The District was forced to either reduce the construction costs or have a public referendum to continue the Elementary School Project as a reimbursable project. The District opted to modify the project to avoid a referendum.

The revised Elementary School project reduced the number of classrooms as well as the overall classroom size. As a result of these modifications, the District submitted an amended PlanCon D form, listing the cost of the Elementary School as \$34,997,654. As the cost was now under the referendum trigger, PDE determined a referendum was not required to continue the project with PlanCon reimbursement.

In addition to the construction costs, the District began to face other unforeseen financial adversities. Within a short period of time, the Federal government scaled back the terms of the BAB 2009 B Bonds reducing the amount of reimbursement the District would receive on its interest payments; the Commonwealth slashed public school subsidies, which accounted for a large percentage of the District's revenues; the District's portion of pension costs rose steeply; and the number of students opting to attend charter schools continued to drastically increase, thus further accelerating District enrollment decline. While many school districts in Pennsylvania suffered under the weight of these changes, they had a profound effect on Penn Hills since these increases in expenditures were in addition to the \$14.3 million in capitalized interest and equipment, furniture and fixture expenses the District had removed from the construction budget and agreed to pay without the use of the Construction Fund.

In April of 2012, a dispute arose regarding whether the costs of the athletic facilities were included in AI's design plans. While the Board and the community believed the fields and athletic facilities were included, AI insisted they were not. Ultimately, it was determined that the District would have to incur an additional \$2 million in expenses if the District wanted athletic fields.

At this point, PDE notified the District that the Elementary School Project exceeded the Local Share Limit designated by PDE. This notification served to alert the District that it may not be able to afford the projects. PDE thus required the District to explain how it would pay for the local share of the expenses. As a result of the notification, the District sought to have an exception granted by PDE so that they would still receive reimbursement. In a letter dated July 11, 2012, Liberto informed PDE that

the District had been able to grow its fund balance from \$4.6 million at the end of FY 2011 to a projected fund balance of \$5.6 million at the end of FY 2012 with \$2.5 million set aside for debt service, had the ability to borrow more money based on the District debt limit capacity, and would be able to pay for the Projects through consolidation savings from the elimination of jobs. In a letter dated December 3, 2012, PDE granted the exception.

Despite these financial hurdles, AI and the Board continued to overspend on the construction projects. Many aspects of AI's design of the High School significantly increased the cost of construction, which in turn increased AI's fee which was based on a percentage of the costs. These design components included: two-story floor to ceiling glass windows, spiral staircases, rounded hallways, a rounded façade, a one-million-dollar canopy, chandeliers, skylights, plaster walls and an auxiliary gymnasium in addition to a full sized gymnasium.

Another source of increased costs of the Project was decisions made in regard to value engineering. Value engineering is defined as alternative design solutions to optimize the expected cost/worth ratio of projects at completion. In other words, value engineering addressed the need for high quality/cost material versus lower quality/cost materials in building the High School. Normally, three to five options were presented to the Board for materials that could be utilized for specific construction purposes. The Board would vote on those options. With both the High School and the Elementary School, the bids were based on low or medium cost materials. However, the Board was given the option to approve higher cost materials throughout the project. The Board approved the use of the highest cost and quality materials in nearly every instance.

Turner continuously recommended alternatives that could cut costs without affecting the functioning of the school, including eliminating corridors, eliminating or modifying skylights, and eliminating terrazzo finishes on the floors. AI ignored these recommendations and the Board approved the more expensive options. In one example, the Board approved the use of tiles imported from Italy, as opposed to tile that could be obtained locally, on the walls of the foyer of the Elementary School.

Due to the overages in the construction budget, in May and June 2012 the District held a series of meetings with the Board, administrators, the solicitor, AI and its legal counsel, and Turner to sort out what to do. Everyone acknowledged that the Projects were over budget. Turner told the District it would need an additional \$17 million to finish the Elementary School as designed and include the athletic facilities.

In a letter, dated June 15, 2012, the District's Solicitor advised the District to move forward with additional borrowing to resolve the financial issue. Since these additional borrowings were not in place at the time of the application, the Solicitor informed the District in the letter that PDE may not approve the Elementary School project. The Solicitor recommended the Board pledge their fund balance to PDE to secure its approval and then obtain the additional funding through borrowing.

As a result, the District chose to borrow more money to complete the Projects as designed. However, as the monies borrowed in 2012 did not affect the limited areas of construction considered by PDE, it was determined that another Act 34 hearing to notify the public of the changes was not required. The District then fired Turner.

## V. THE 2012 BOND ISSUE

On June 26, 2012, the Board voted on a resolution to issue bonds not to exceed \$35 million. Board members Joseph Bailey, Carl Barbarino, Jennifer Burgess-Johnson, Denise Graham-Shealey, Robert Hudak, and John Zacchia all voted in favor of the resolution. Donald Kuhn, Carolyn Faggioli and Heather Hoolahan were marked as absent.

Appendix A of the 2012 Official Statement used to sell the 2012 Bonds ("2012 O/S") showed that between FY 2012, which had just ended, and FY 2015, when both schools would be fully operational, the District enrollment was expected to decline by almost an additional 900 students. Moreover, Appendix B of the 2012 O/S showed that the District's losses from operations before capital outlays ranged from \$1.0 million to \$5.0 million per year from FY 2008 to FY 2011.

Yet, the 2012 O/S indicated that the 2012 Bonds received: "Underlying Bond Rating: Moody's Investors Service - "A3" BOOK-ENTRY ONLY Enhanced Rating (based on Pennsylvania Act 150 School District Intercept Program): Moody's Investors Service - "A1" (stable outlook)". In other words, the District again obtained a better rating, and therefore a better interest rate due to the Intercept Program provided for in Section 633.

On September 28, 2012, the District closed on the 2012 Bonds in the total face amount of \$27,215,000, which total was comprised of the following: (i) \$3,830,000 General Obligation Bonds, Refunding Series A of 2012 ("2012 A Bonds"), (ii) \$1,030,000 General Obligation Notes, (Federally Taxable) Refunding Series B of 2012 ("2012 B Bonds"), and (iii) \$22,355,000 General Obligation Bonds, Series C of 2012

("2012 C Bonds"). The 2012 Bonds were not insured as it was determined it was not financially advantageous to do so.

The 2012 A and B Bonds were used to refund prior debt, while the proceeds of the 2012 C Bonds were used to: (1) provide funds for the completion of the construction and equipping of the new Elementary School, new High School<sup>6</sup> and new athletic facilities; (2) fund capitalized interest on the debt related to the new Elementary School, and (3) pay the costs of issuing the Series C Bonds.

The \$22,355,000 of 2012 C Bonds, after bond expenses such as discounts, and issuance expenses, resulted in funds of \$21.7 million of which \$17.0 million was deposited to a "2012 Construction Fund" and \$4.7 million to a "2012 Capitalized Interest Fund."

Without bond insurance, the District's credit rating for the 2012 Bonds was principally enhanced by the Section 633 Intercept Program. Accordingly, if there was a failure to pay the debt service on the 2012 Bonds, payment was to be made through the Intercept Program. This payment would again ensure that the District's debt payments would be made, however, it would result in reducing the Commonwealth appropriations provided to the District, thus prioritizing the payment to the bondholders over other expenses necessary to provide the students with their constitutional right to an education.

As noted in the 2012 O/S, without voter approval by referendum, the Taxpayer Relief Act of 2006 prohibited a school district from increasing any rate of tax for school purposes more than an Index established by the Commonwealth Department of Labor,

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<sup>6</sup> While completion of the High School was listed as one of the permissible uses of the 2012 Bond proceeds, witnesses testified before this Grand Jury that this was done in the event the proceeds would be needed for the High School, however, the District did not intend and did not use the monies for the High School project.

except for certain limited purposes. Inasmuch as the District did not submit its incurrence of the 2012 Bond debt to a voter referendum, the District could not raise its tax rates above the Index in the event it was unable to pay the debt service on the 2012 Bonds without court approval.

Given that the 2012 O/S disclosed that the District had spent more than its revenues since FY 2008, and that the District could not raise its tax rates beyond the Index to pay debt service, the realization of the consolidation savings were of even greater importance in order to pay increased debt service. Yet, debt service on the 2012 C Bonds was incurred with no additional savings. This fact meant that the \$1.8 million of debt service in excess of savings shown at the March 14, 2011 Act 34 Hearing increased by at least \$1.0 million more per year and on average about \$3.7 million per year as shown in the Section 633 coverage disclosed in the 2012 O/S.

At no point did any of the authorities with oversight question why the District had to borrow additional monies to complete the Projects. Even though the PlanCon materials state that the process is supposed to "(3) ascertain compliance with state laws, regulations and standards", PDE does not look at the total costs of the projects they "oversee," as they believe they are not obligated to do so. Rather, they review only limited aspects of construction costs. As a result, although the additional 2012 Project borrowing of \$22 million was reported to PDE along with the cumulative borrowing of \$130 million in 2009, PDE never raised any questions as to why the District needed more money or how the additional debt was to be paid.

## VI. MATERIAL FINANCIAL STATEMENT ERROR

As if to add insult to injury, an accounting error was discovered during the audit of the District's financial statements for FY 2013. The independent accounting firm hired by the District to conduct the audit, Herbein+Company, Inc., discovered that the District had not properly reported construction period interest paid on the 2009 Bonds in Fiscal Years 2010, 2011 and 2012. Specifically, as interest expense was paid on the 2009 Bonds from the 2009 restricted Capital Projects Fund, it was added to the Construction in Progress account. However, the 2009 Bond Ordinance did not allow for the payment of interest expense from the 2009 Bond funds. Due to this restriction, generally accepted accounting standards required that the interest expense should be charged to the General Fund. Accordingly, due to the independent accountant's failure to comply with the generally accepted accounting standards, the General Fund balances as reported in the District's audited financial statements for the period FY 2010 through FY 2012 were overstated by a cumulative amount of \$11 million. Moreover, after the error was discovered, the independent accountants did not properly disclose the error in the District's audited financial statements for FY 2013, which were released to the public in February of 2014. While the independent accountants noted the prior period restatement in the FY 2013 audited financial statements, the disclosure did not clearly identify sufficient information that would allow a user to evaluate the effects of the error in either FY 2013 or the prior years. Particularly, the independent accountants should have disclosed the resulting effects on the change in the net position of the prior years in the District's Fiscal Year 2013 audited financial statements. Such disclosure would have revealed to the District and the public the deficits from the



previous years. A review by an accounting expert of the effects on the fund balance for the fiscal years 2010- 2014 show the effect of the error on the General Fund balance to be as follows:

General Fund Balance (Deficit)

	As reported on Audited Financial Statements	Recalculated Fund Balance After Correction for Interest Expense	Difference
June 30, 2010	3,413,351	1,295,007	2,118,344
June 30, 2011	4,647,959	(2,416,939)	7,064,898
June 30, 2012	3,689,267	(8,322,185)	12,011,452
June 30, 2013	126,555	(10,165,076)	10,291,631
June 30, 2014	(8,904,140)	(19,195,771)	10,291,631

The above table is a crucial link to the public understanding of how the District appeared to abruptly change from having relatively healthy General Fund balances reported at the end of FY 2010 through 2012, to the enormous General Fund deficit at the end of FY 2013, which ultimately grew to an \$18 million deficit by Spring of 2015. As shown from the table above, the change in the General Fund balance was, in fact, not abrupt but rather a steady decline that would have been evident to the public but for the accounting error. As the District is painfully aware, the General Fund deficit was very real, for in September of 2015 the District had to borrow over \$18 million to pay it off.

It is important to note that no money was missing from the District. Rather, the \$11 million error was the result of the improper recording and reporting of interest expense transactions. As a whole, the District's account balances would have reconciled. Because of the error, in FY 2010 through 2012 the District appeared to have more money available to pay for its day-to-day operations. Had the accounting for the interest expense been properly made, the General Fund would have shown a deficit as early as FY 2011. Instead, due to the error, the General Fund showed a positive balance until FY 2013.

The independent auditor utilized a less than clear option to stress the dismal financial condition of the District. In the FY 2014 Audited Financial Statements, the independent auditor included an Emphasis of Matter Paragraph regarding the deficits of the District as reported in the FY 2014 Financial Statements (before recalculation). An Emphasis of Matter Paragraph is meant to highlight a matter in the financial report that the auditor believes should be known to whoever uses the report to fully understand the financial condition of the District.

Rather than an Emphasis of Matter paragraph, the auditor could have issued a statement that the financial condition of the District resulted in doubt that the District could continue as a going concern. In other words, based on factors such as the District's inability to meet its financial obligations, the need to restructure debt, the recurring deficits and the inability of the District to raise taxes above the Index, there was doubt that the District would be able to continue to function. One of the most important aspects of issuing a "Going Concern" statement is that it would include a section explaining how the District intended to correct its predicament. A Going

Concern statement may have caused the District to realize the severity of its financial condition.

While the issuance of an Emphasis of Matter or a Going Concern disclosure is a matter of professional judgment, it is noted that the independent auditor only included an Emphasis of Matter in the year in which the District first recognized the General Fund balance deficit. The expert who reviewed the audit indicated that, in his professional judgment, even before the recalculation of the balances, a Going Concern should have been issued before in the 2013 Financial Statement. Had the error not occurred, the expert would have issued a Going Concern in 2011.

Thus, the recalculation error suppressed the severity of the District's dire financial condition by concealing the growing deficit in the General Fund balance. It likely led to the auditor failing to caution the District about its condition either through an Emphasis of Matter or a Going Concern at an earlier date. Additionally, the appearance of a positive fund balance misinformed those relying on the Financial Statements and may have impacted the decisions made regarding the construction projects.

One of the confounding issues is that the District's professionals repeatedly made presentations to the public that indicated that the District had borrowed money to pay the interest on the 2009 Bonds during the construction period, which is referred to as "capitalized interest." These presentations occurred before and after the adoption of the 2009 Bond Ordinance on September 14, 2009, which did not permit the payment of interest. Also, no mention of capitalized interest was made in the 2009 O/S. Yet, in presentations to the public during the Act 34 hearings held on October 27, 2009, March 30, 2010, and March 14, 2011, it was asserted in the Act 34 booklets and by the

professionals at these hearings that the 2009 Bond funds could be used to pay interest on the 2009 Bonds.

## VII. CONTINUED FINANCIAL DIFFICULTIES AT THE DISTRICT

In 2013, the District again contacted PDE for assistance with its financial problems. PDE again sent a consultant, Patrick Sabol, to assist the District in determining cost cutting measures that would help the District. At the time Sabol was assigned, it was projected that the District would have a deficit of \$500,000 for the FY 2014 school year. However, the charter school costs continued to increase. As a result, the fund balance deficit continued to grow by millions.

Early in 2014, Sabol advised the Board that the FY 2015 budget was out of balance by \$6.5 million. He detailed several cost cutting measures that would need to be taken by the Board to balance the budget. In May of 2014, Sabol attended his last meeting with the Board. At that time, all involved appeared to agree taxes would need to be raised and spending cuts would need to be implemented. Sabol left his assignment with the District believing the FY 2015 budget was in balance.

However, the Board failed to implement many of the measures detailed by Sabol. Some of the cuts were viewed as too extreme by certain members of the Board. Some of the Board simply did not want to raise taxes, although Sabol indicated that a tax increase was a necessity. Some of the cuts, including the elimination of certain classes or teachers, involved projects that individual members of the Board refused to consider cutting. It appeared that, despite a \$6.5M deficit, the Board still did not recognize the severity of the District's financial situation.

While some of Sabol's recommendations were implemented, some of those implemented were later reversed. For example, furloughed teachers were hired back, family members and friends of Board members were hired and bus routes that were initially eliminated were restored. In one instance a bus route was added for a relative of a Board member so that the student would not have to walk too far. This child was the only student who utilized this bus route.

In early 2015, Liberto informed the Board that the District could not make its payroll. The Board instructed Liberto to take the money from other line items in the budget and to limit the amount of information regarding finances to the public. The Board did not want any negative publicity of the District's financial difficulties for fear that more families would leave for charter schools. Liberto continually recommended furloughs of staff, however, the District continued to take measures to avoid furloughs. Liberto's recommendations were not implemented. One Board member indicated to this Grand Jury that had Liberto insisted that the cuts be implemented, Liberto risked being terminated by a vote of the Board. In fact, in March 2015, Liberto was terminated.

In April of 2015, the District was unable to meet its financial obligations. Shortly thereafter, the District petitioned and obtained approval from the Allegheny County Court of Common Pleas ("the Courts") to incur unfunded debt to pay its obligations. Once approval was obtained, the District then had to find a financial institution that would lend it money despite its failing financial condition. PNC, who had been the District's bank for years, agreed to provide a short-term loan for approximately \$12 million. To minimize the risk to PNC, the District agreed that the loan would be for a term of nine months, that PNC would be the first paid when tax revenues were collected

and that the District would request PDE to pay PNC out of its subsidy money, thus invoking the Section 633 Intercept Program. The District then refinanced the loan through issuance of \$19,965,000 in tax exempt bonds and notes (collectively "2015 Debt"), which consisted of the following: (i) \$18 million in bonds ("2015 Bonds") the proceeds to be used for payment of current General Fund Expenses of the District as permitted by the Final Order of the Court dated August 17, 2015 pursuant to Sections 8129 and 8130 of the Local Unit Government Debt Act, the same constituting unfunded debt under the Local Government Unit Debt Act and costs and expenses related to issuing the 2015 Bonds; and, (ii) \$1,965,000 in notes ("2015 Notes") used to partially refund the District's 2014 Bonds and pay all costs and expenses related thereto. The payments for the 2015 Debt have all been made through the Intercept Program. This structure provided PNC the assurance that it would be paid should the District default.

Despite the issuance of the 2015 Debt, the District continued to struggle to make its debt payments. Shortly after the 2015 Debt was issued in September 2015 (FY 2016), the District discovered that it had not properly accounted for certain salaries within its budget. Therefore, although its budget showed that the District should have broken even, the District again had a deficit.

On October 28, 2017, the District issued \$21,395,000 of taxable notes ("2017 Notes") the proceeds which were used to (1) advance refund of the School District's outstanding 2014 Bonds (formerly 2009 A Bonds); and (2) pay all costs and expenses incurred by the District in connection with the issuance and sale of the Notes. The purpose of the 2017 Notes was to lengthen the repayment period. In the short run, the 2017 Notes allowed the District to make a lower annual debt service payments,

however, they increased the total amount the District would have to pay over time by over \$25 million, thus increasing the District's long term debt.

During the course of this investigation, the Grand Jury conducted an financial analysis of the fees paid to various business entities throughout the District's construction projects. The following calculation of fees from the 2009 and 2012 Bonds was determined using information from the District's ProSoft and QuickBooks software data for the construction accounts and data from the District's bond settlements:

Architectural Innovations	\$ 10,254,673.78
Turner Construction	\$ 3,854,147.17
Russo/Rucon	\$ 260,000.00
Financial Security Assurance, Inc.	\$ 1,095,380.45
Piper Jaffray & Co./Investments	\$ 163,120.73
U.S. Asset Management	\$ 315,466.36
NE Securities (settlement sheet only)	\$ 10,629.00
Bruce Dice & Associates	\$ 90,000.00
Cohen & Grigsby, P.C.	\$ 20,000.00
Causey, Demgen & Moore, P.C.	\$ 4,500.00
Dinsmore & Shohl, LLP	\$ 106,158.68
Doc-U-Print	\$ 21,000.00
Moody's Investors Service	\$ 15,400.00
Standard & Poor's	\$ 28,000.00
BNY Mellon (settlement sheet only)	\$ 8,300.00
<b>TOTAL:</b>	<b>\$ 16,246,776.17</b>

In addition to the above-listed fees paid directly from the bond proceeds, H-T Capital earned a total of \$1,059,954 and Piper Jaffray earned an additional \$250,378 in the form of bond discounts when they sold the 2009 and 2012 Bonds. Piper Jaffray made an additional \$20,560 on a 2013 Bond and \$189,520 on a 2014 Bond which refinanced this debt. These underwriter discounts, while not paid directly by the District, reduced the amount the District received in bond proceeds.

#### VIII. IMPACT ON ACADEMIC PERFORMANCE

PDE's website in regard to Pennsylvania School Performance Profiles for the Penn Hills Senior High School and for the Penn Hills Elementary School reveals the following:

With the Maximum Measure listed as 100, the Penn Hills Senior High School ("PHHS") received an overall Building Level Academic Score of 59.5 for the 2016-2017 School Year. This score, and all scores under 60 within all reports, were assigned a symbol which was an upside down red triangle. The following scores were also observed within the PHHS Report:

1. Mathematics/Algebra 1-Percent Proficient or Advanced on PSSA/Keystone  
40.36
2. ELA/Literature-Percent Proficient or Advanced on PSSA/Keystone  
50.19
3. Science/Biology-Percent Proficient or Advanced on PSSA/Keystone  
41.82
4. SAT/ACT College and Career Readiness Benchmark  
54.47



A three-year report was generated within the PDE website and the PHHS was assigned the following numbers on the same measurement scale listed above:

**2015-2016**

<b>Overall Building Level Academic Score</b>	<b>58.80</b>
<b>Subject</b>	<b>Score</b>
Math	40.32
ELA/Literature	58.23
Science/Biology	45.16
SAT/ACT College Ready	39.32

**2014-2015**

<b>Overall Building Level Academic Score</b>	<b>64.50</b>
<b>Subject</b>	<b>Score</b>
Math	26.95
ELA/Literature	63.00
Science/Biology	30.80
SAT/ACT College Ready	38.40

**2013-2014**

<b>Overall Building Level Academic Score</b>	<b>59.20</b>
<b>Subject</b>	<b>Score</b>
Math	42.68
ELA/Literature	N/A
Science/Biology	19.87
SAT/ACT College Ready	28.14

It should be noted, the reports listed above could not be found for the 2012-2013 School Year. However, as the site was further explored, a link was found for an Excel Spreadsheet containing Academic Data for the 2012-2013 School Year. This file was downloaded, saved, and reviewed. The 2012-2013 Academic Data Excel Spreadsheet appeared to report the following:

<b>2012-2013</b>	
<b>Overall Building Level Academic Score</b>	<b>64.20</b>
<b>Subject</b>	<b>Score</b>
Math	47.99
ELA/Literature	70.85
Science/Biology	18.64
SAT/ACT College Ready	44.03

The following was found in regard to the Penn Hills Elementary School ("PHES"):

With the Maximum Measure listed as 100, the PHES received an overall Building Level Academic Score of 61.1 for the 2016-2017 School Year. The following scores were also observed within the PHES Report:

1. Mathematics/Algebra 1-Percent Proficient or Advanced on PSSA/Keystone  
30.86
2. ELA/Literature-Percent Proficient or Advanced on PSSA/Keystone  
40.88
3. Science/Biology-Percent Proficient or Advanced on PSSA/Keystone  
55.34
4. SAT/ACT College and Career Readiness Benchmark  
N/A

A three-year report was generated within the PDE website and the following was reported in regard to the PHES:

“Historical SPP building level scores for this building are not available because a new PA school building number was recently assigned”.

After learning the above information in regard to the PHES, the DAI Unit Detectives checked the same link previously reviewed in regard to the PHHS. The Excel Spreadsheets of Academic Performance Data for the 2014-2015 and the 2015-2016 school years were found. The PHES was not listed in the 2014-2015 Excel Spreadsheet. However, the PHES was found in the 2015-2016 Excel Spreadsheet which appeared to report the following:

<b>2015-2016</b>	
<b>Overall Building Level Academic Score</b>	<b>64.50</b>
<b>Subject</b>	<b>Score</b>
Math	28.65
ELA/Literature	40.16
Science/Biology	71.09
SAT/ACT College Ready	N/A

According to the District, the average composite SAT score for 2015-2016 was 980. The 2016-2017 score was 985 and the 2017-2018 was 1004.

#### IX. CURRENT FINANCIAL POSITION OF THE DISTRICT

The audit report from the Auditor General found that the District's long term debt has grown exponentially since the onset of the construction project. In 2009, the

District's long term indebtedness was approximately \$11 million. By 2015, it had grown to \$167 million.

Due to its financial instability, PDE has designated the District to be under Financial Watch. While in Financial Watch, the District is able to obtain advances on its future subsidies. Additionally, the District may be able to obtain additional funding beyond the designated subsidy amount. However, this additional funding is not guaranteed. Should the District's financial situation continue to decline, it risks being placed in Financial Recovery. Should the District meet the criteria for this classification, PDE would take over the functions of the School Board. PDE only uses the Financial Recovery classification as a last resort.

Information provided by District officials shows that the District has now reached a state of economic crisis. The District cites as reasons for the crisis, the following: the increase in debt service beyond what it can afford; an increase in taxes beyond what the residents of Penn Hills can afford; an increase in charter school tuition based on an exodus of families who prefer smaller neighborhood schools and an overall decrease in enrollment. The debt service paid in the 2017/2018 school year was approximately \$9 million. That amount is scheduled to increase to \$12 million in the current school year. The charter school enrollment has increased from 696 students in 2011/2012 school year to 764 students in the current school year. As a result, the District now faces a cash flow shortage, as it has almost every year since 2005; its cumulative deficit is projected to balloon to \$17.0 million by June 30, 2019; it is unable to raise taxes beyond the Index to pay for the shortfall; and, the consolidation savings from the Construction Projects never materialized. According to the District's projections, it will run out of cash

by April of 2019. The District indicated that it is already withholding payment to select vendors. In looking ahead, the District expects to have an \$8 million shortfall in the budget for the 2019/2020 school year, which is the equivalent of furloughing 80 teachers. The cumulative deficit for FY 2020 is estimated to be \$25 million.

According to the District's Administrators, any further cuts to the budget are not possible without jeopardizing the safety of the students and/or violating the students' right to an education. The District is already facing the elimination of educational programs. The District reported that twenty-four teachers were furloughed in the 2016/2017 school year. Most of these positions were special education teachers. Another twelve teachers were furloughed in 2018/2019. Additionally, several positions were eliminated in the administrative offices including the Assistant Superintendent, Assistant Business Manager, Assistant Plant Services Manager, Pupil Personnel Manager, Transportation Manager, Computer Programmer position, Grant Writer/Staff Trainer, and Public Relations Consultant. Salary freezes were also imposed on other staff members including the Superintendent, the Business Manager, the Human Resource Director, and Food Service Workers.

Due to the financial restraints of the District, bus routes have been cut, and approximately fifty (50) crossing guard positions have been eliminated. Administrators for the District believe any further cuts will result in an unsafe condition for students to be transported to and from school. Further cuts in the budget will likely result in more students attempting to go to charter schools, as well as further loss of qualified teachers and other employees, and the inability to attract new, qualified applicants to work in the District.

## ANALYSIS

### I. THE DISTRICT'S INABILITY TO PAY FOR THE PROJECTS

The decisions made by the District and the Board beginning with the decision to build two new school buildings (with related athletic facilities, demolition, and renovation projects), and continuing throughout the construction process, amounted to reckless gambling with taxpayer funds and the education of its students. Those involved either failed to recognize, or completely disregarded, the financial condition of the District in making these decisions. Furthermore, the Board ignored repeated warnings from the Project Manager that the Project was over budget. The Board opted for a design that increased the square foot area of the High School by nearly one third even in light of declining enrollment, and selected high end materials when the original bid was based on low to mid-range materials and the Project was already over budget.

Although the District had to address the deteriorating buildings, the decisions made to address the problems were ill-advised at best. The decision to build rather than renovate, the hiring of an inexperienced architect, and the continuous approval of unnecessary expenditures all contributed to the financial disaster the District is now facing.

At the time the District determined that new schools would be built, it had been operating at a loss for several years. Based on declining population and enrollment there was no realistic expectation that this trend would reverse.

In 2009, only two years after needing assistance from PDE to address the significant deficits in its overall budget, the District forewent less costly options recommended by Dr. Boyer to renovate and consolidate buildings and decided to build

new, larger schools. Despite the fact that the District continued to operate at a loss, it issued over \$130 million in bonds increasing its debt service to \$5.2 million. The Board neither implemented all the cost cutting recommendations to reduce expenditures, nor raised taxes in these years to increase revenues in order to pay for these projects. Rather, the District relied on consolidation savings to cover the debt service.

Some members of the Board and administration testified that the numbers they relied upon were preliminary estimates made before the final designs of the schools were complete. These estimates were inconsistent throughout the Projects. Common sense dictates that one cannot spend more than one can afford. Regardless of the initial estimates, once it was known that the actual costs of the plans exceeded the District's financial means, the Board recklessly continued to approve AI's increases to the square footage and to authorize other expenditures that exceeded the budget.

The consolidation savings prepared by the District's Business Manager a few months before the 2009 Bonds were approved projected consolidation savings of \$4.2 million which would not cover the debt service by almost \$1.0 million, annually. After the Act 34 hearing for the Elementary School on March 14, 2011, the estimated combined savings for the High School and Elementary School dropped to \$3.4 million, creating an annual shortfall of \$1.8 million. Worse yet, the 2012 Bonds added nearly \$1.0 million of annual debt service with no savings at all. Liberto was very clear that in order to realize the \$4.2 million he estimated in consolidation savings, the Board had to strictly adhere to a plan to cut spending. However, the Board failed to do so.

The bulk of the consolidation savings were to come from the Elementary School. The District was consolidating six buildings into one, leading to a bigger reduction in

staff and services. The original plan was to build the Elementary School and the High School simultaneously. For reasons that this Grand Jury could neither determine nor fathom, the Elementary School was delayed and the High School was built first. Several Board members testified and were asked to explain why the Elementary School was not built first. None could offer a logical reason, and most contradicted the others when trying to explain. Whatever the reason, the District opted to delay the Elementary School regardless of the lost consolidation savings. The savings from the High School were not nearly enough to pay the annual debt service. That decision added two more years of increased debt service without consolidation savings which was another contributing factor to the District's declining financial situation.

Because the Business Manager's consolidation savings estimates were always less than the annual debt service incurred to build the Projects, the Projects were economically infeasible from the start. Without the consolidation savings, the District had no way to pay for the Projects since it had persistent operating losses commencing in 2005 and it could not raise its taxes beyond the Index. By the time of the March 14, 2011, Act 34 Elementary School hearing, the District knew it did not have the consolidation savings to pay the annual debt service on the 2009 Bonds and it had also agreed to raise at least another \$14.3 million to fund equipment, furniture and fixtures and to pay debt service on the 2009 Bonds. None of this information was disclosed to the public. However, without money to finish the High School and build the Elementary School, the Board incurred over \$22 million in 2012 C Bonds for this purpose, with no way to pay the debt.



Board members often expressed reliance on the theory that new school buildings would attract students back to the District. In doing so, the Board hoped to see a reduction in its charter school expenditures. Again, the best case scenario did not come to fruition. Even as the schools were being built, the decline in enrollment continued. Thus, these savings were never realized.

As the Projects continued and it became evident these savings were not going to be realized, the Board did nothing to compensate for the lost savings. As the financial position of the District continued to deteriorate, the Board failed to, and at times refused to, implement the necessary spending cuts or raise taxes to increase revenue. These failures, combined with the reckless spending, placed the District in a precarious financial condition.

This Grand Jury heard testimony that, even when the Board did furlough staff at the end of one fiscal year, it would rehire them a few weeks later at the beginning of the next fiscal year. In other instances, a position would be eliminated, but another position would be created. Although there were some savings when new positions were created at lower salaries, at times the positions added were higher paying jobs, effectively negating much of the long term consolidation savings that could have been realized from eliminating teachers. While a recent review of the District's employment shows that 164 jobs were eliminated between 2008 and 2012, none of which appears to be due to consolidation since neither school was finished during that time frame, it was too little, too late.

The Board was constantly reminded to reduce its spending. Dr. Boyer provided very specific recommendations on how to do so. Sabol also made recommendations in

this regard. Throughout this time, Liberto was constantly advising the Board to cut costs. It refused to do so.

Witnesses testified that many of these decisions were based on personal or political interests of the Board members. In several instances, family and friends of Board members were hired and, on at least one occasion, services were added to accommodate family members.

Throughout the planning of these Projects and the continual borrowing undertaken by the District, the Board made no effort to raise additional revenue by raising taxes. Without consolidation savings, the only option for the District to increase its revenue in an attempt to counter the additional debt service expenditures it was undertaking was to raise taxes. However, prior to 2015, the Board made no effort to do so, even by an amount within their limited authority.

While this Grand Jury recognizes that we now have the benefit of 20/20 hindsight, the Board's failure to consider the potential negative consequences is inexcusable. The Board wantonly ignored the repeated advice of the Construction Manager and the District's Business Manager. Furthermore, the Board ignored statistics showing exponential growth in costs of charter schools and declining enrollment based on a belief that if they built it, the students would return. Ultimately, failing to address increasing budget overages while continuing to expand square foot area caused the District's economic ruin and placed the educational needs of the students in jeopardy.

## II. THE CHOICE OF ARCHITECT AND OVERBUILDING OF THE PROJECT

From the choice of architects to the value engineering decisions, the Board refused to act within the District's financial limitations. The Board made the decision to hire AI, the least experienced, while most politically connected firm, to build these schools. While the Board members who appeared before us denied the selection of AI was based on political motives, the appearances of conflicts and impropriety cannot be ignored. The School Board President previously worked for Jan Brimmeier's brother, and even listed him as a reference to obtain other employment with the Commonwealth. This appearance of impropriety was amplified by the continual expansion of the project and over-spending on items that had no educational value in the schools, yet increased AI's fees that were based on costs.

The High School was over-built in terms of the size of the building. The final figure for the square footage of the high school was 303,000. In contrast, the contract that was awarded to AI on April 20, 2009 specified a square footage of 253,875. The previously existing building was between 218,000 and 226,000 square feet. The study prepared by Dr. Boyer recommended that the size of the high school be decreased to 208,029, based on the decline in enrollment. In the end, the new building was 49,125 square feet larger than what the District had contracted for and almost 95,000 square feet larger than Dr. Boyer's recommendation.

In addition to the lavish expenditures described previously, the design of the building itself also incorporated elements that unnecessarily increased costs. The High School was built with curved hallways and a curved façade. A white roof was installed rather than a cheaper, black roof. AI insisted on these features, not for the benefit of

the students, but so that the High School would resemble a bird from an aerial view. While these elements may make the buildings showpieces, they do nothing to benefit the education of the students. In fact, the curved hallways create a potential safety issue in that a teacher standing at one end of the hallway may not be able to see what is happening at the other end of the hall. Despite constant reminders that the Project was over budget, Al continued to insist on these design features and the Board continued to approve them.

Even when faced with having insufficient funds to pay for the Projects, Al continued to spend and the Board continued to approve, such expenditures. When the cost of furniture and fixtures for the Elementary School was presented to the Board, its members were given the option of using the furniture from the old buildings or borrowing additional money to buy new. The Board chose to buy new, and that expense was financed through the 2012 Bonds.

Many of the Board Members who appeared before this Grand Jury showed a lack of basic knowledge of the District's yearly budget. Many of them grossly underestimated the total budget and/or the amount of debt the District had incurred. In one example, Robert Hudak testified before this Grand Jury that he had no idea what the District's budget was, when he testified as follows:

Q: You have been on the School Board.

Mr. Hudak: I know.

Q: For ten years.

Mr. Hudak: I know. Yes.

Q: What's the budget [of] the School Board during that ten years? How much per year were you handling in tax payer money?

Mr. Hudak: Large amount.

Q: How large?

Mr. Hudak: Couple million.

Q: A couple million?

Mr. Hudak: 8 million.

Q: How about 80, 90 million maybe?

Mr. Hudak: Could be.

In short, even as the construction projects ran out of money, AI continued to needlessly spend and the Board continued to needlessly approve every expenditure, seemingly without regard to budgets, deficits or debt.

### III. THE ISSUE OF CAPITALIZED INTEREST

The 2009 A and B Bonds did not require payment on principal until after completion of the construction, which the 2009 Act 34 presentation listed as August 2012. The interest expense incurred on the 2009 A and B Bonds during the construction period, from October 2009 to April 1, 2013 (April 1, 2013 was picked to give some cushion in the event of a delay), was estimated in the Act 34 Hearings to be \$11.2 million for the High School and \$6.1 million for the Elementary School, for a total of \$17.3 million. Since the consolidation savings from the Projects would not be achieved to pay the debt service on the 2009 A and B Bonds until after the Projects were completed in August of 2012, the District had to find a way to pay the \$17.3 million

debt service during the construction period. The District's options were extremely limited, inasmuch it had been operating at a loss since FY 2005 and could not afford the added interest expense, and was unable to raise taxes beyond the Index because the 2009 A and B Bonds were issued as non-electoral debt. The only option was to take the construction period interest payments from the \$125.4 Construction Fund. This option would leave less than \$110 million to actually build and equip the projects. The Act 34 presentations for the High School and Elementary School showed that capitalized interest had been borrowed as part of the 2009 Bonds; however, capitalized interest was not authorized in the Board's Bond Ordinance of September 14, 2009, nor mentioned in the 2009 O/S used to sell the 2009 Bonds. Public presentations were made indicating that the District had borrowed capitalized interest to pay construction period interest on the 2009 Bonds, when it had never been authorized in the District's resolution approving the 2009 Bonds.

These inconsistencies regarding the plan for capitalized interest raise significant questions regarding the inclusion of capitalized interest in the 2009 Bonds. While the witnesses who appeared before this Grand Jury testified that the capitalized interest was included in the amount of the bond issue, the 2009 Bond Ordinance and 2009 O/S did not include capitalized interest in the borrowing figure. In fact, an amortization schedule attached to the 2009 Bond Ordinance has a blank column for capitalized interest. Despite these inconsistencies, the bond professionals testified that the 2009 Bond was intended to include capitalized interest.

The payment of capitalized interest became a major problem for the District. One contributing factor was that the 2009 Bonds were issued before the construction

plans were finalized. Although bonds are generally not issued prior to knowing the final costs of the Projects, where the interest rates are particularly favorable there are times when it is better to issue the bond early, particularly when dealing with very large sums of money. Ultimately, the District settled on a \$130 million budget for the construction of the new schools and borrowed that sum for the Projects. Regardless of preliminary estimates, once the District chose that course, like any prudent borrower the Board needed to adapt its plans to fit within the \$130 million it had already borrowed. The Board failed to do so.

The District, AI and Turner began exploring ways to address the construction budget shortfalls. Ultimately, the Board decided that \$5.9 million for new furniture, fixtures and equipment costs as well as \$8.4 million in capitalized interest would be removed from the construction budget and that Liberto would attempt to find money from other sources to pay for the total \$14.3 million obligation. Common sense alone would suggest that finding \$14.3 million would not be an easy task for a District that had been operating at a loss for the past several years. Further complicating the matter were the unforeseen increases in the pension costs, the reduction in the BABs reimbursement, and the slashing of subsidies. Additionally, the charter school costs were continuing to increase as the number of charter students swelled. Not surprisingly, the District was not able to find the alternate funding within its budget. This shortfall led to the decision to issue the additional 2012 C Bonds to provide \$17 million more for construction and equipment with almost \$5 million to be set aside for capitalized interest to complete the Projects. The 2012 C Bonds did not have consolidation savings to offset costs.

#### IV. LACK OF MEANINGFUL OVERSIGHT BY THE COMMONWEALTH

While the District was taking on debt that it could not afford, PDE was “overseeing” these Projects. Unfortunately, PDE oversight of the District’s spending was completely ineffective. Although Pennsylvania statutes and regulations governing school districts do provide for oversight, as applied, they do not serve to protect a District or its taxpayers from the type of overspending uncovered during this investigation.

Existing legislation and regulations preclude school districts from borrowing more than a defined borrowing base. This borrowing base limit is set by multiplying the average of a district’s revenues over the past three years by 2.25. This calculation is then used to determine the maximum amount of long term debt any school district can borrow. However, the calculation does not factor in a district’s expenditures when setting the debt limit. Thus a district which averages \$90 million in revenues per year would have the same borrowing base regardless of whether it spent \$50 million per year or \$150 million per year.

As applied in this investigation, the District was permitted to continually issue bonds and incur debt despite its years of continually operating at a deficit. The District has now reached a level of indebtedness which is approaching its borrowing base limit making it practically impossible to effectively finance any additional debt. The District has few other options to recover.

Had the calculation of the borrowing base limit included some analysis of the District’s expenditures along with its revenues, the District’s borrowing may have been



limited prior to it reaching the catastrophic financial condition it now faces. While school districts need to be able to issue bonds and, at times, finance large sums of money, there needs to be a method of determining what a district can actually afford in determining its debt limit. Allowing such borrowing without any consideration of the actual financial condition of the district can lead to the type of over-borrowing by a district seen here.

Additional oversight is required by Act 34. Although ironically referred to as the “Taj Mahal Act,” Act 34 does little to prevent a Taj Mahal from being built since it provides few consequences for failing to comply with its requirements, and PDE does not focus on the total costs of a project, the lavishness of expenses or the feasibility of the project for the district.

At an Act 34 hearing, the District is required to inform the public of the need for the project, the maximum cost of the project, the financing plans and any tax implications. In terms of the Act 34 hearing requirements, PDE only reviews the process to make sure the proper procedures were followed and the required information included. If a procedural defect, such as an insufficient notice to the public of the hearing, is found then PDE will require a second hearing to be held.

However, PDE does not review the validity of the information provided to the public. Therefore, any misrepresentation, whether intentional or inadvertent, is unlikely to be caught. If inaccurate or even fabricated information was presented to the public at an Act 34 hearing, PDE has no ability to stop the project. In fact, there are no provisions in the School Code that address a situation where incorrect information is provided to the public at an Act 34 hearing.

PDE will review the costs of certain aspects of the construction project to determine if there are overages. However, these reviews are related only to the size of the buildings and the usable classroom space. PDE does not review the total project costs to determine if a district is spending extravagantly.

Should a district fail to comply with Act 34, the only consequence PDE can impose is the potential withholding of reimbursement funds from the PlanCon reimbursement process. This consequence is only possible, however, if the district has applied for reimbursement. A district that has undertaken a project without seeking reimbursement faces no consequence from PDE for failing to comply with any provision of Act 34. According to PDE representatives, PDE has never stopped reimbursement over a district's finances. Act 34 cannot be effective in preventing the dire financial circumstances uncovered here unless it provides for meaningful oversight and consequences when its provisions are violated.

Furthermore, PDE is not required to review how a district will finance, or whether a district can afford, the costs of a construction project. These decisions are deemed to be "local matters" for each District to decide. Likewise, PDE will not review the value engineering decisions of a district or the design elements of a building. Again, these decisions are left to the sound discretion of the district. PDE also does not include in its calculations the "non-classroom" space, such as gymnasiums, auditoriums or athletic fields. In other words, Act 34 does nothing to prevent an overly extravagant design or the inclusion of lavish lobbies or similar areas that do nothing to benefit the education of students.

In the case of Penn Hills, had PDE been required to look beyond the size of the buildings in determining the need for a public hearing or referendum, irresponsible spending could have pushed the Projects above the triggers.

In 2012, the District told PDE it was going to incur over \$22 million in 2012 C Bonds to complete the same Projects the District had already told PDE, through its Act 34 hearings and PlanCon filings, it could fully build and equip with the \$130 million in 2009 Bonds. PDE could do nothing to stop the 2012 bond issuance or ensure the matter was disclosed to the taxpayers of the District. There was not even an Act 34 hearing required for the 2012 C Bonds that increased the debt for the Projects by 17%.

Meaningful oversight could have prevented the District from irresponsibly overspending on these Projects. PDE oversight that requires review of the total project costs as they relate to the size of the school could have uncovered the overly extravagant design and material expense decisions approved by the Board. Likewise, oversight that included a review of the financing and the financial status of the District could have forced the Board to choose more affordable options. Such oversight could have prevented the Taj Mahal of a High School that was built in Penn Hills at the expense of the education of the students.

## V. THE STATE INTERCEPT PROGRAM

As previously described, Section 633 of the School Code provides an Intercept Program which requires the Commonwealth to take money out of a District's subsidy should it default on certain debts, including the payment of debt service on the Bonds issued for the Projects. The Intercept Program is available for both insured and

uninsured bonds. The Intercept Program enhances the credit worthiness of the school district. Under the Intercept Program, bond purchasers are attracted to bonds issued by school districts because it reduces the risk of default from their perspective, regardless of the financial condition of the district issuing the bonds. As a result, even when a district's bonds are insured, the Intercept Program provides the district with a better rating and lower interest rate, which enables the district to finance more money than it could if forced to rely on its own ratings.

Bonds are insured primarily as a means to obtain a better rating. When a district insures a bond issue, it is able to use the credit rating of the insurance company. With a better rating, the district may get a better interest rate. A bond that is uninsured relies on the issuing district's credit rating. The decision to insure or not insure is generally based on a comparison of the cost of the insurance with the savings obtained from a lower interest rate.

Should a school district be unable to make a debt service payment, PDE will either make the payment directly or grant the district an advance on its subsidy so it can pay the debt. Such an advance would then reduce the amount the district would receive for the later subsidy. In a district such as Penn Hills where the subsidy is a large percentage of revenue, a future reduction would detrimentally affect future budgets. The revenue from the subsidy would otherwise be available for the District's salaries, computers, books or other educational materials, but for the Intercept Program taking the revenue to pay bond holders.

The Section 633 Intercept Program is an unsecured promise by the Commonwealth to take the District's educational appropriation to help the District make

its debt payments. Insurance companies are not, in reality, insuring the bonds as they assume minimal risk with PDE covering the debt service by advancing funds from the District's subsidy.

The impact of the Intercept Program was disclosed to the bond purchasers in the 2009 O/S that was used to sell the 2009 Bonds, with the additional warning that: "The withholding provisions of Section 633 are not part of any contract with the registered owners of the Bonds and may be amended or repealed by future legislation. The effectiveness of Section 633 may be limited by the application of other withholding provisions contained in the School Code, such as provisions for withholding and paying over of appropriations for payment of unpaid teachers' salaries. Enforcement may also be limited by bankruptcy, insolvency, or other laws or equitable principles affecting the enforcement of creditors' rights generally." On the other hand, the 2009 O/S also disclosed that: "Under the Constitution of the Commonwealth of Pennsylvania, the State is charged with the duty of supporting and maintaining an efficient school system." PDE's enforcement of the Intercept Program, which results in taking moneys from State subsidies otherwise provided to the District to support educational programs could deprive the District of funds necessary to fulfill this Constitutional mandate.

As noted in the 2009 O/S, without voter approval by referendum, the Taxpayer Relief Act of 2006 prohibited a school district from increasing any rate of tax for school purposes more than an Index established by the Commonwealth Department of Labor, except for certain limited purposes. Inasmuch as the District did not submit its incurrence of the 2009 Bond debt to a voter referendum, the District could not raise its tax rates above the Index in the event it was unable to pay the debt service on the 2009

Bonds. Given that the 2009 O/S disclosed that the District had spent more than its revenues since FY 2005, and that the District could not raise its tax rates beyond the Index to pay debt service, the realization of the consolidation savings were of utmost importance in order to pay debt service. As early as the Board meeting with the municipal bond brokers on September 1, 2009, the Board knew that the consolidation savings were less than the annual debt service on the 2009 A and B Bonds. The Projects were, therefore, economically infeasible from the start leaving the Intercept Program as the principal source to pay debt service when the Projects failed. The Board forged ahead compounding one bad decision after another, allowing cost to spiral despite the risk of losing the subsidies necessary to provide for the education of its students.

Penn Hills has received advances on its subsidies for several years to pay the debt service on its bonds. At least since April 1, 2015, PDE has been directly paying the Bond Sinking Fund Depository from the District's future subsidies to cover the costs of debt service. Currently, the District is paying debt service on bonds and notes that it issued in 2013, 2014, 2015 and 2017 to refinance a portion of the 2009 and 2012 Bonds. The 2009 Bonds were insured, however, the 2012 Bonds were not. Had the Commonwealth not enacted the Intercept Program requiring payment of debt service to bond holders from the future subsidies of the District, the insurance company which was paid to insure the 2009 Bonds would have been required to pay the bondholders and the District's future subsidies would have remained available to pay for the staffing, supplies and materials necessary to provide the education guaranteed under

Pennsylvania's Constitution. With current projections, payment of debt service through the Intercept Program will result in the financial collapse of the District in April, 2019.

#### VI. 2009 AND 2012 OFFICIAL STATEMENTS SHOW INTERCEPT PROGRAM IS KEY

The 2009 O/S contains a table labeled Section 633 Coverage. This table shows the estimated annual debt service for the 2009 A and 2009 B Bonds, after the Commonwealth construction reimbursements, referred to therein as "Estimated Annual Local Effort," which represents the average annual debt service the District was expected to pay from its own funds. From the Table, the District's Estimated Annual Local Effort for the 2009 A and B Bonds is as follows:

Series A of 2009: Estimated Annual Local Effort of the Bonds    \$2,759,726

Series B of 2009: Estimated Annual Local Effort of the Bonds    \$9,522,824

The total Estimated Annual Local Effort for the 2009 A and B Bonds is \$12,282,550. However, not deducted from the figures in the table is the annual Federal BAB subsidy for the interest on the 2009 B Bonds which, according to the District's audited financial statements, amounts to \$2,260,141 per year. Accordingly, in an average year the total Estimated Annual Local Effort for the 2009 A and B Bonds after the BAB interest subsidy is \$10,022,409. As noted above, this amount is an annual average that includes principal and interest over the life of the Bond.<sup>7</sup> Since the average annual consolidation savings as prepared by Liberto at the time the 2009 Bonds were issued was only \$4.2 million, in an average year the District would have about a \$5.8 million

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<sup>7</sup> The payment schedule, which bond counsel failed to include in the O/S, indicated that the payments would be smaller in the first years of repayment then increase over the life of the bond.

shortfall in funds to pay its debt service. Neither the District's projected consolidation savings, nor any other specific means of repayment, were mentioned in the 2009 O/S as a means to make up the deficit. Given that the District's 2009 debt was issued without a voter referendum and that the District had a history of losses, the District would have no way to pay the shortfall absent the Intercept Program.

From the enormous \$10 million net annual average debt service needed to repay the bonds and the absence of any other District source to pay that debt service, it was apparent from information in the 2009 O/S that the credit worthiness of the District and the insurability of the 2009 A and B Bonds rested solely on the Intercept Program.

The impact of the average \$5.8 million debt service shortfall was not initially apparent to taxpayers since the 2009 A Bonds did not have substantial principal payments until 2015, and the 2009 B Bonds did not have a substantial principal payment until 2022. Hence, for about a six-year period the Estimated Annual Local Effort on the construction debt was virtually interest only. The tipping point began to occur as the District approached the end of the six-year period in 2015 when principal began to come due. Granted, the District did refinance the 2009 A Bonds in 2013 and 2014 in an attempt to further delay some of the effects of the enormous average debt service shortfall, but the lack of realization of consolidation savings, the delay in completing the Elementary School until Fall 2014, the cost overruns that necessitated the 2012 Bond issue, and the District's continuing operating losses, accelerated its impact.

To fund the cost overruns on the Projects, the District issued over \$22 million of 2012 C Bonds. Like the 2009 O/S, the 2012 O/S contains a Table labeled Section 633



Coverage that shows the average “Estimated Annual Local Effort” debt service for the 2012 C Bonds, after the Commonwealth construction reimbursements, as \$3,656,885 per year. This amount is a complete shortfall, as no consolidation savings were anticipated to offset this sum. The impact of this additional debt was obscured, because the District back loaded the principal on the 2012 C Bonds so that it does not begin to substantially come due until 2039. In essence, the current effect of the 2012 C Bonds is interest only of about \$894,000 per year without any savings to offset it. However, the \$3,656,885 per year average annual debt service shortfall is a stark warning that a day of reckoning will come.

The 2012 C Bonds are uninsured. Moreover, they were issued to complete the High School and Elementary School, both projects that were supposed to be fully constructed with the 2009 A and B Bond proceeds. In fact, the 2009 O/S stated that: “There is no financing for capital purposes currently being contemplated by the District at this time.” Given that the District’s 2012 C Bonds were uninsured, were issued to further finance projects that were grossly underfunded despite representations in the 2009 O/S to the contrary, were issued without a voter referendum, were issued without any anticipated consolidation savings, and, considering the District’s persistent history of losses, were issued without regard to the fact that the District had no way to pay the annual interest of \$894,000 per year let alone the future principal on the 2012 C Bonds, the Board should have recognized that payments could only come through withholding of subsidies under the Intercept Program. As indicated by the foregoing, it was apparent from reviewing the 2012 O/S that the credit worthiness of the uninsured 2012 C Bonds rested solely on the Intercept Program.

In sum, there should be no surprise that, given the District's historic losses and reliance on massive debt incurred without voter referendum, the key component to effectuating the issuance of the 2009 and 2012 Bonds was the Intercept Program. It also should have been readily apparent, especially upon the issuance of the 2012 C Bonds, that the District's 2009 Projects were experiencing enormous cost overruns while its persistent operating losses had not abated. Since no source of repayment was disclosed, the bond holders were ultimately relying on taking the State subsidies appropriated for the students' education in the likely event of default.

## VII. CATASTROPHIC CONSEQUENCES

Between FY 2010, when the Projects began, through FY 2015, the District incurred a cumulative deficit of \$18 million that was paid off in total with the District's debt issuance in September 2015 (FY 2016). Since that time the District's deficits have again begun to accumulate and are expected to top \$17 million by the end of the current fiscal year, FY 2019. This means that since the inception of the projects, the District has incurred a stunning cumulative deficit of at least \$35 million. Furthermore, since FY 2016, the annual deficits have accelerated to about \$5 million per year, indicating that with the burden of increased annual debt principal payments for the Projects the District has passed the tipping point described above. The historic deficits manifest the financial infeasibility of the Projects.

The District's financial position is catastrophic as it is not clear how it will continue to operate, let alone recover. The District will have a \$6 million cash shortfall in April, 2019 that will cause its financial collapse without intervention from PDE or the courts.

The immediate cause of the shortfall will be the debt service payments due on April 1, 2019, which are planned to be taken from the District's educational subsidy. The current Superintendent and Business Manager testified that the District's operations and educational programs have been reduced to the point where there can be no further cuts without jeopardizing student safety or impairing the ability of the District to meet minimum educational standards.

What is more, there is little hope for financial relief. Under the School Code, a school district is not permitted to file a municipal debt adjustment action under the United States Bankruptcy Code. Therefore, the District cannot seek Federal bankruptcy protection from its creditors. In certain limited instances, the School Code authorizes the Secretary of Education to issue a declaration to place a school district in Financial Recovery Status. Financial Recovery Status allows the Commonwealth to intervene in operating a school district in varying degrees, up to and including the appointment of a Receiver, with a commitment by the Commonwealth to ensure delivery of effective educational services to all students enrolled in the district. At this time, there is no guarantee that the District will qualify for Financial Recovery Status or that PDE will designate it as such. Absent a designation of Financial Recovery Status by PDE or some other outside intervention, there is no precedent for what will occur in the Penn Hills School District when it reaches the point of financial collapse. It should be noted that even if the District were to qualify for Financial Recovery Status, that status has numerous negative consequences to the District, such as loss of local control, possible cuts to educational curriculum and programs, migration of more students to charter

schools and other school districts, and the inability to hire and retain qualified teachers and employees.

The reckless financial decisions made by the Penn Hills School Board, School Administrators, and their advisors over the past decade plunged the District into an accelerating downward financial spiral that has resulted in the District's economic ruin. The District's taxpayers may face a future of tax increases accompanied by loss of property value, while the District's students face vast uncertainty regarding their education.

## **GRAND JURY RECOMMENDATIONS**

We, the 2017 Allegheny County Investigating Grand Jury make the following recommendations:

1. That Pennsylvania General Assembly enact legislation which would require a referendum for any borrowing by a School District which would amount to 50% or more of its borrowing base limit;
2. That the calculations used to determine debt limits for school districts be modified to include consideration not only of the district's revenue, but also the district's expenditures;
3. That the PlanCon process to be changed so that PDE is required to review the total costs of a project in determining any referendum trigger;
4. That PDE implement regulations by which school districts that obtain exceptions pursuant to the local share limit demonstrate that they have conformed with any promises made to obtain the exception;
5. That a School District or School Board be held accountable should it falsely communicate to PDE that it will take actions to be in compliance with Act 34 or PDE requirements;
6. That the Statutes of Limitation be extended for Ethics Act violations for public officials acting in their official capacity, or that the Statutes of Limitation begin to run at the time of discovery of the violation;
7. That PDE be given the authority to require a referendum or stop a construction project in the event that a District fails to comply with Act 34 requirements;

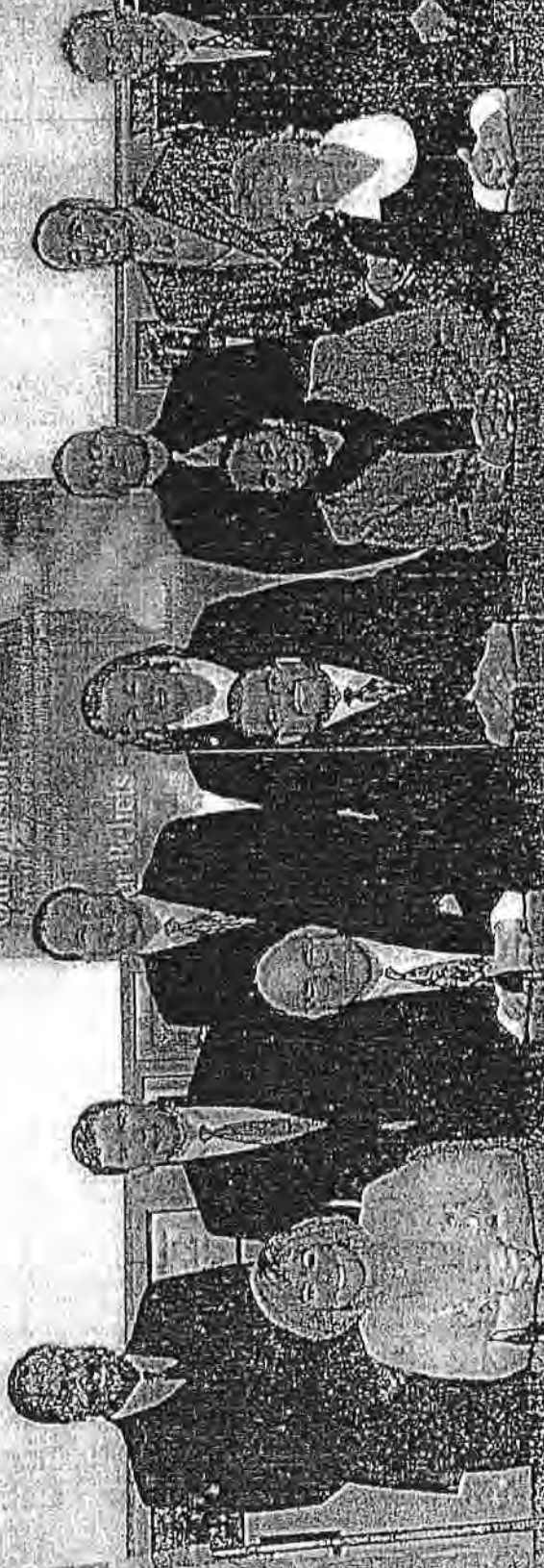
8. That Section 633 of the Public School Code be amended to require the Pennsylvania State Auditor General or another independent agency conduct an audit and certify that a school district is financially capable of fulfilling its obligations prior to issuing a bond that will be subject to the Commonwealth Intercept Program and that the findings of the audit be reported to the public in an Act 34 hearing;
9. That the General Assembly enact legislation whereby public officials may be held liable for willful or wanton conduct depriving students of their right to a public education as guaranteed by Article III, Section 14 of the Pennsylvania Constitution;
10. That no school board member be permitted to sit on the board unless and until they complete the mandatory training pursuant to Section 328 of the Public School Code; and
11. That a copy of this Report be delivered to State Representative Anthony DeLuca, as well as the leadership of the General Assembly, so that they may review the legislative recommendations and take appropriate action.

# Penn Hills School Board

Our Vision  
The Vision of the Future  
The Vision of the Future  
The Vision of the Future

Our Mission  
The Vision of the Future  
The Vision of the Future  
The Vision of the Future

Our Goals  
The Vision of the Future  
The Vision of the Future  
The Vision of the Future



I, Erin Vecchio, have read Grand Jury reports One and Two in regards to the practices of the Penn Hills School District concerning the construction of both the High School and the Elementary School and this is my response.

I believe that the term "the board" is objectionable as Board membership continuously changes. The report, when stating "the Board" makes no accurate catalogue of Board Membership at any time and further leaves the impression that it remained unchanged during this entire period. I was no longer on the board after November 2009, therefore I was not on the Penn Hills School Board at any time during the construction of the High school or the Elementary School and had no say in any changes to size, materials or completion date, all of which took place between 2010 and the projects completion in 2014.

I also want to say that referencing the title "superintendent" neglects to point out that there were several individuals holding that position during this period. It would have been helpful for all involved if D.A. Zappalas office would have returned the minutes from the school board meetings and all other relevant documents.

**Report One:**



Page 1 States: In May of 2016, the Pennsylvania Auditor General, Eugene A. Despasquale, issued the results of a performance audit ("the Audit") of the Penn Hills School District ("district") evaluating the application of best practices in regard to areas of finance, governance, safety and contracts.

RESPONSE: Mr. Depasquale's performance audit also addressed THEFT. The Penn Hills Police were contacted to file criminal charges against district employees who were caught, on camera, stealing fuel and using district credit cards to purchase over \$400,000 worth of tools and materials for there own personal use. There was also \$22,000 from ticket and food receipts from a sporting event that was stolen. These investigations were taken from the Penn Hills Police by D.A, Zappalas office. D.A. Zappalas investigators told police and the school district that they were going to handle them.

Page 3. States: Ultimately the Grand Jury is unable to recommend the filing of criminal charges by way of a presentment in this case

RESPONSE: Was any of this evidence ever shown to the Grand Jury? Rick Liberto is at the center of all of this. School board members, superintendents, architects, banks and bonding agencies all relied on

figures given to them by Rick Liberto. Business Manager Rick Liberto was given immunity. Why and for What? When this investigation started Rick Liberto told me that if prosecutors came after him he has enough information to "bring them all down, including [REDACTED] [REDACTED]". After Liberto was fired he actually has KDKA report Ralph Ionadi and Pittsburgh Tribune Review Reporter Mike Divittorio over to his house and showed them 15 boxes of files he had taken from the school district and repeated to them what he said to me, that if he was prosecuted he would bring them all down, including [REDACTED]. It looks like that strategy worked. About 10 years ago Rick Liberto told me and Joe Bailey that he had received immunity then from the F.B.I. He said he wore a wire for the F.B.I. to a meeting at [REDACTED] office where he, [REDACTED] and [REDACTED] [REDACTED] were discussing the contracts for the new schools.

Page 4 States: The board, various district employees in leadership positions and third-party vendors .... engaged in actions and participated in decision making that showed, at best, an utter lack of understanding...

RESPONSE: Votes were taken based on information given to the Board by Rick liberto, Jan Brimmeier/AI and the PA department of Education.

Early in 2009 Jan Brimmeier/ AI Architects told the school board at a public meeting that the district would save approximately 8 to 10 million

dollars with the consolidation from building the new schools and eliminating the maintenance on the old buildings. Even as those projected saving figures declined by August 2009, the school board was shown, by business manager Rick Liberto, and verified by the PA Dept. of Education, a projected savings that was enough to pay the loans based on the original designs and completion date.

Page 5 states: The 2009 board, consisting of Erin Vecchio (President of the board)....

RESPONSE: I was not the President of the board, Joe Bailey, who's name is not even listed was the President.

Page 5 States: This board compounded the effects of this decision by recklessly spending...

RESPONSE: Again, I was not on the School board as of November of 2009. All construction changes occurred from 2010 and later.

Page 5 States: The hiring of Jan Brimmeier, the principal of AI architects, has the appearance of a politically motivated decision. Board President Erin Vecchio had previously worked for her brother, the Pennsylvania Turnpike Commissioner, Joe Brimmieier. As described below, Joe

Brimmeier also acted as a reference and was otherwise involved in Vecchio getting a job within the Pennsylvania Department of Revenue.

RESPONSE: First I was not the Board President at this time, Joe Bailey was President, I was hired by then Turnpike Commissioner William Lincoln in 2002, 7 years before the vote to hire Jan Brimmeier/ AI Architects, and one year before Joe Brimmeier was hired as the new Turnpike Commissioner. I was making approximately \$45,000 annually as a toll collector. In 2004 I was injured on the job and placed on workmen's compensation. In 2006 I tried to go back to work, but the Turnpike would no take me back because I still had a brace on my leg from the prior injury at work. I discussed this with Joe Brimmeier and he first suggested that I apply with the PA Lottery, then the PA Department of Revenue, given my condition I required a desk job.

Page 6 States: Jan Brimmeier/AI Architects was paid \$11 million to build the schools.

RESPONSE: Part of the \$11 Million dollars was a Multi-Million dollar BONUS even though they were over budget and finished late. Who on that board voted for the bonus and who proposed it in the first place?

Page 13 States: ...Jan Brimmeier had many strong political connections in Penn Hills. Jan's sister was the solicitor for the municipality of Penn Hills.

RESPONSE: As I testified, the Brimmeier family's strong political connections were with State Rep. Tony Deluca and his son, then mayor Anthony Deluca.

Page 13 States: The School Board President Erin Vecchio

RESPONSE: Once again, I was not the school board president.

Page 13 states: Vecchio then applied for a managerial position in the Department of Revenue, listing Joe Brimmeier as a reference.. In fact she was the only employee interviewed for the position... She was then offered the same job at four steps, pay grades, above the minimum.

RESPONSE: I believe that I was not the only candidate interviewed for the job. It is my understanding that Rick Kunkle was also interviewed for the managerial position that I was hired for at the Department of Revenue. Also, I was not hired by Joe Brimmeier for the position. I was hired by Tom Wolf.

I was not hired four steps above the minimum, I was hired as a manager at \$47,00 a year, which at the time made me the lowest paid office manager in the Department of Revenue. The manager of the adjoining Department of Revenue office, Jim Ellenbogen, had a salary of \$85,000 a year.

Page 13 and 14 States: Vecchio admitted to the Grand Jury that Joe Brimmeier called her regarding the open architectural position for the construction projects. According to Vecchio, Joe Brimmeier stated that State jobs would be available for the Penn Hills if Jan Brimmeier was awarded the position. However, Vecchio maintained that she merely advised Joe Brimmeier regarding the interview process for the architectural position.

RESPONSE: Joe Brimmeier did call me about the construction work the school district was planning and asked if I could help get his sister, Jan Brimmeier of Architectural Innovations/ AI hired to do the project. I told him I could get her an interview. When Joe said he could make state jobs available for Penn Hills I told him to call State Rep. Tony Deluca.

After Interviewing several architectural firm, Jan Brimmeier/ AI was hired by a unanimous vote because they put on the best presentation.

Regarding the "State jobs" Jan Brimmeier was hired in 2008, the Rep Deluca's daughter, [REDACTED] received a job at the PA Turnpike. Rep. Deluca's son-in-law, [REDACTED], received a job at the PA Turnpike. Rep. Deluca's daughter [REDACTED] received a job at the PA Lottery. [REDACTED] the then Penn Hills Democratic Party Chairman and whose wife works as Rep. Deluca's secretary, was given a managers position at the PA Turnpike with a \$65,000 a year salary. Additionally, Rep Deluca's cousin received the contract with the school district to supply the furniture for the new school buildings.

I find it shocking the Rep. Deluca's grandson, [REDACTED] was hired at DA Zappala's office as this investigation is going on as well.

My job though was eliminated at the Department of Revenue in August 2009 because of "financial" reasons. I believe it was because I had been subpoenaed three times and was testifying at a Grand Jury convened by then PA Attorney General Tom Corbett on political corruption. [REDACTED]

[REDACTED] were targets in that investigation. Joe Brimmeier was ultimately convicted of abusing his position as the PA Turnpike Commissioner.

Page 14 State: Board member Carolyn Faggioli testified before this Grand Jury that she and several other board members received phone calls from

Vecchio and Kuhn telling them too vote for Al... Further, Rick Liberto , District Manger, testified that he heard Vecchio say at a board meeting that she new some people received phone calls and they had better listen. However other board members who testified denied these calls were made.

Response: All current and former board members who testified denied I called them. As I recall, I testified that Rick Liberto called me about the vote and I assumed he or Rep. Deluca would have called some of the other board members. Board Member Cathy Mowry works in Rep. Deluca's office, so there would be no need to call her. Seven years later, on May 3, 2016, former board member Carolyn Faggioli stood up at a public meeting and stated that while she was a board member she had received calls from Rep. Deluca, and Deluca would call other board members and tell them how to vote. Carolyn has said several times that she was afraid of Rep. Deluca because he has threatened her job. Carolyn told the FBI this at a previous interview. Deluca has told her and others, "You see what I did to Erin (Vecchio)." Carolyn is a widow and a single mother with two sons, she has a non-union job with Allegheny County.

I have stated before that Rep. Deluca has threatened me over school board votes. In 2009 I asked FBI investigator [REDACTED] why hasn't



Deluca ever been arrested and he told me Deluca has people in high places looking out for him.

Page 19 States: On April 20, 2009, the district awarded a contract to have AI demolish the administration building and build a new high school...

RESPONSE: AI was awarded the contract April 20, 2010, the district didn't have their bond money until March 30, 2010. 7 months had passed since the original vote. Should there have been another vote and was there?

Page 24 States: When Bonds were issued in 2009...

RESPONSE: The bonds may have been ready earlier but they were not issued to the district until March 30, 2010, after the legally required Act 34 public meeting.

Page 38 States: ... which ultimately grew to an \$18 million deficit...2015.

RESPONSE: In 2015 the district turned down a \$9 million offer for Penn Hebron elementary school and its surrounding acreage, instead it sold it to the municipality for \$250,000.

Page 51 States: The decisions made by the district and the board beginning with the decision to build two new school buildings...amounted to reckless gambling with taxpayers funds...

RESPONSE: As of August 2009 vote to go ahead with the original construction project that was to be completed by August 2012, the plan was reviewed by the business manager, the department of education, the architects and the bonding company, who, by law would not be allowed to make the loan if it did not believe the district could afford it.

Page 58 States: The school board president previously worked for Jan Brimmeier's brother...This appearance of impropriety was amplified by the continual expansion of the project and over spending...

RESPONSE: Since I am the only board member, past or present, that I'm aware of that ever worked for the Turnpike, I assume this is referencing me. Again, in 2009 I was not the board president and after November 2009

I was not on the board. The continual expansion and over-spending did not start until 2010. If I had Access to the board minutes from the meetings I would be able to show that I protested, from the AUDIENCE, the construction over spending.

Page 75 States: That a copy of this report to be delivers to State Representative Anthony Deluca...

RESPONSE: [REDACTED] The fact that his name is not even mentioned until the last sentence of this report is inexcusable.

With all the inaccuracies in this report I have to wonder, did Rep. Deluca write this himself ?

RESPONSE: Regarding the hiring of Bruce Dice & Associates. I never wrote a not and gave it to Donna Liberto (Business Manager Rick Liberto's mother and Dr. Gennari's Secretary) demanding the Bruce Dice & Associates be hired. I recommend in executive session to hire Bruce Dice & Associates and requested the other board members submit names that they would like to consider. Seven Broad members instructed Superintendent Gennari put up a resolution to fire Maiello Brungo and Maiello, whom she had a longstanding relationship with. Dr. Gennari refused to take action for several weeks, until Rep. Tony Deluca personally visited her in her office about it.

It should be noted that [REDACTED]  
[REDACTED]  
[REDACTED]

Page 5 States: Vecchio also knew of Bruce Dice from seeing him at many local political functions. Vecchio also testified that some politically influential people in Penn Hills wanted Dice & Associates to be hired as the new solicitor.

RESPONSE: I specifically said to the grand jury that Rep. Deluca wanted them hired also.

Page 6 States: This appointment proved lucrative to Dice & Associates.

RESPONSE: I was not on the board from November 2009 until December 2015. In January 2016 I asked Dice & Associates to lower their price, and they did.

Bruce Dice & Associates are the Municipal Solicitors for Penn Hills, Plum, Verona and Wilkins Penn Joint Water Authority.

Page 10 States: ... Board vote on the resolution to retain "forensic accountants... Despite the fact that less than two months earlier a majority of the board voted in favor of a forensic analysis... Then board president, Carl Barbarino, unexpectedly changed his vote from affirmative to negative resulting in a failed motion to retain forensic accountants.

RESPONSE: I testified that Carl Barbarino told me and others that Tony Deluca and Craig Alexander told him to change his vote. Barbarino was not endorsed by the Penn Hills Democratic Party and was not reelected.

Page 13 States: ....indicating that Craig Alexander represented Don Kuhn Jr., Donald Kuhn 111, Nikalais Kuhn, Carolyn Faggioli, Cathy Mowry, and

Jennifer Burgess-Johnson in private legal matters. Alexander also represented Kuhn Auto Body...owned by Don Kuhn Sr.

RESPONSE: At the time when Alexander of Dice & Associates first got hired by the board, Don Kuhn Jr. was the only board member Alexander had represented. Since then he has also represented, for free, then Business Manager Rick Liberto, who was suing a tenant, and Rep.

Deluca's Brother in-law [REDACTED]  
[REDACTED]

Page 19 States: Ironically, Vecchio cited a conflict of interest as the reason to terminate the former Solicitors...

RESPONSE: The former Solicitor's Mailleo, Brungo and Mailleo, represented Rep. Deluca's cousin, and then board member, [REDACTED] against the School District. [REDACTED]  
[REDACTED] I was also on the Board when I caught her and turned her in.

Page 20 States: ...the 2012 vote to rescind the resolution... the board

shamefully mismanaged \$130 million of public funds over the course of the prior three years...

RESPONSE: This should read two years. The voted referenced was in 2012, no charges were made to design or completion dates until 2010.

To realize what a sloppy, slanderous, waste of Taxpayer money this report is all you need to do is see that my name, Erin Vecchio, is mentioned more than anyone's, yet I WASN'T EVEN ON THE BOARD DURING THE ENTIRE TIME OF CONSTRUCTION !